(Testimony of David Hiram Foote.)

Q. Do you know of any instance in which North American has been consulted in regard to construction projects proposed by the Applicant prior to the time the matter was taken up by the Board?

A. No, I think not.

Q. You have very little to do in your capacity as secretary and treasurer of the company with such projects? A. Very little.

Q. Is that correct?

A. Yes, before they are adopted, or before they are approved by the Board or Executive Committee.

Q. So if anyone from the company conferred with North [404] American you probably wouldn't be advised of it? A. No, I wouldn't know.

Q. At any Board meeting attended by you, Mr. Foote, have you ever heard the views of North American Company regarding a particular construction project voiced by any member of the Board?

A. I have not.

Q. Do you know whether or not the Board has ever requested Mr. Black to obtain the views of North American Company on any construction project proposed by the Applicant?

A. They never have formally. That is, you mean the Board in formal action?

Q. Yes. A. No, they have not.

Q. Well, do you know whether or not any Board member has suggested it informally?

A. No, I don't know that. I know of no such request; I have never heard of it.

(Testimony of David Hiram Foote.)

Q. To your knowledge, has the Board ever approved or directed a course of action which it knew to be contrary to the wishes of the North American Company?

A. I believe not. It might have turned out to be so afterwards, but not before the action was taken.

Mr. Phleger: Well, would you mind reading that question again? [405]

(The question referred to was read by the reporter as above recorded.)

Mr. Gerdes: Read the answer.

The Examiner: Is there an answer there?

The Reporter: Yes.

(The answer referred to was read by the reporter as above recorded.)

The Examiner: Did you understand that question, Mr. Foote?

The Witness: Well, yes. The question was whether the Board had ever taken any action that it knew to be contrary to the wishes of the North American Company.

The Examiner: That is right.

Mr. Phleger: Of course, may it please the Examiner and counsel, some of these questions are phrased in such a way as to make it rather difficult to answer and convey a true situation.

Now, that question is predicated upon the assumption that there has been communicated to the Board

(Testimony of David Hiram Foote.)

of Directors on some occasion some statement as to North American's attitude. The witness has testified that such matter has never been presented.

Now, when a question is asked do you know of their ever having taken an action contrary to the views expressed by North American, it assumes that there has been at some [406] time an expression of North American's views.

The Examiner: Well, that is the possible construction on the question but, on the other hand, it seems to me the way it is worded "that it knew to be contrary" might or might not include an inference that they knew what the attitude of North American was.

Mr. Phleger: I think that is the fault of the question. In fact, he has already stated he never heard of the expression of North American's views with respect to any pending matter. That makes unnecessary, it seems to me, any question to the effect do you know that they have ever taken any action contrary to their views, and carries with it an implication that there must have been some expression of North American's views. It is not important but——

The Examiner (interposing): Well, do you want to change your answer in any respect, Mr. Foote?

The Witness: May I have the question and the answer?

(The question and answer referred to were read by the reporter as above recorded.)

(Testimony of David Hiram Foote.)

The Witness: Probably the best answer to that question would be "no, no."

By Miss Calkin:

Q. Has Mr. Black ever advised you or the Board at a meeting attended by you as to North American's views on any particular matter? [407]

A. No.

Q. Mr. Foote, have you ever discussed any phase of the Hetch Hetchy situation with any representatives of the North American Company?

A. No.

Q. Do you know whether or not North American has advised the Applicant with respect to its activities in municipal elections on bond issues to construct a distribution plant in the City of San Francisco? A. No.

Q. Who recommends dividend payments to your Board, Mr. Foote? A. The president.

Q. Has that always been the custom?

A. Yes.

Q. Do you know whether or not Mr. Black confers with North American representatives concerning the amount of common stock dividends which the applicant should pay prior to the time his recommendations are made to the Board?

A. I do not.

Q. Does Mr. Black confer with any members of the Applicant's organization concerning the amount of dividends on the common stock prior to the time he makes his recommendations to the Board?

(Testimony of David Hiram Foote.)

A. I don't know. [408]

Q. He doesn't confer with you as treasurer of the company? A. No.

Q. Is the question of common stock, the amount of common stock dividends discussed at the meetings of the Executive Committee prior to the time recommendations are made to the Board?

A. No.

Q. Do you recall any instance in which the Board has refused to follow for Mr. Black's recommendations on the question of common stock dividends?

A. No.

Q. What about during Mr. Hockenbeamer's presidency?

A. The Board when they reduced the dividend on the common stock—Mr. Hockenbeamer thought that it might be paid for that particular quarter which was being considered and then at a later date it could be decided whether or not it should be reduced after the earnings of the company were known, would be known for the subsequent months.

Q. Well, do you have reference to the dividend for the third quarter of 1933? A. Yes.

Q. Well, who suggested that the dividends be reduced at that time? A. Who suggested it? [409]

Q. Yes.

A. I can't remember. There were two or three members of the Board that seemed to be ultra conservative on the subject and thought that as long as

(Testimony of David Hiram Foote.)

the company's earnings for the quarter had been somewhat reduced that it might be better not to pay the dividend but to pay only at the rate of 6 per cent per annum instead of at 8 per cent.

Q. And that was the rate of the dividend of the Applicant on its common stock from the third quarter of 1933 until the last quarter of 1936?

A. Yes. Well, wait a minute. Last quarter? Yes; it was three quarters, I think, paid at 8, and one quarter at 6—wasn't that right? Or was it two quarters at 8 and two quarters at 6?

Q. In '33, that is my understanding.

A. Well, the record will show. I can't carry——

Q. (Interposing) In '36 there were three quarters paid at 6 per cent and the last quarter at 8 per cent, isn't that correct?

A. The last quarter at 8 per cent?

Q. In 1936?

A. That was when it was restored?

Q. That is right. A. Yes, yes.

Q. Now, at whose suggestion was the dividend restored [410] to 8 per cent in 1936?

A. I think at the suggestion of the president. The president when he recommends the payment of the dividend, submits the company earning statements to the Board and if they—he draws attention to the fact that those earning statements warrant the payment of the dividend and suggests that they be paid in accordance with the usual custom.

(Testimony of David Hiram Foote.)

Q. Well, did you ever hear that North American protested the reduction of dividends in 1933?

A. I heard that they protested after the action was taken, yes.

Q. Do you know to whom they protested?

A. Mr. Hockenbeamer told me that they had protested.

Q. And what other comments did Mr. Hockenbeamer make at that time?

A. Well, he discussed the matter very freely with me—we were old friends—and he said, I think, that the president of North American had him on the telephone, long distance, and had him there for half an hour, as I recollect, and wanted him to get the Board to reconsider its action, but he would not.

Q. But Mr. Hockenbeamer refused to submit the matter?

A. Mr. Hockenbeamer—my recollection is that he told me that he wouldn't ask the Board to reconsider its action. [411]

Q. Well, was the matter reconsidered by the Board? A. It was not.

Q. Do you know whether or not Mr. Black recommended the increase of dividends in the last quarter of 1936 at the request of North American Company?

A. I know that he recommended the increase because the earnings of the company warranted it, but I don't know whether it was done at the request of

(Testimony of David Hiram Foote.)

North American Company. I have no knowledge on that subject.

Q. And you don't know whether or not Mr. Black confers with North American representatives regarding proposed dividends before the same are declared? A. I do not.

Q. If a reduction or increase in the present dividend rate on the common stock were suggested would you, as a director of the company, request North American's opinion on the advisability of such action before it was taken by the Board?

A. No; my judgment would be based entirely upon the company's earnings.

Q. Mr. Foote, I hand you what has been marked for purposes of identification Commission's Exhibits Nos. 6 and 7, and will ask you if you can identify those two documents.

A. (Examining documents) I don't think there is any question but I wrote these letters. Yes, the fact of the [412] matter is I recognize my handwriting as these were sent to Mr. Black; that is my handwriting.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 6 and 7.

Mr. Phleger: No objection.

The Witness: They are addressed to a member of the Board.

The Examiner: May I see them, please, Mr. Foote?

(Testimony of David Hiram Foote.)

The Witness: Yes. (Handing documents to the Examiner) They are addressed to Mr. Doolittle, who was a member of the Board of Directors at that time, I believe.

The Examiner: This photostat of what purports to be a telegram on a postal telegraph blank dated December 18, 1935, directed to Mr. F. W. Doolittle consisting of five typewritten lines of message will be received in evidence as Commission's Exhibit 6.

(The telegram referred to was marked Commission's Exhibit No. 6 and was received in evidence.)

The Examiner: The other telegram answering the same description, except it contains 6 typewritten lines of message, will be received in evidence as Commission's **Exhibit 7.**

(The telegram referred to was marked Commission's Exhibit No. 7 and was received in evidence.) **[413]**

The Witness: I could add that that information in those letters would be sent to any director of the company who happened to be absent from the city if he so requested.

By Miss Calkin:

Q. Now, what was the occasion for your wiring Mr. Doolittle?

A. I presume that I was asked to do so.

Mr. Bosley: Would you mind stating the purport of those telegrams so that I may know what you are talking about?

(Testimony of David Hiram Foote.)

The Examiner: Will you let me hear the last question and answer, please?

(The question and answer referred to were read by the reporter as above recorded.)

The Examiner: Have you seen those now, Mr. Bosley?

Mr. Bosley: What is that?

The Examiner: Have you seen the copy?

Mr. Bosley: She is just showing me the copy now.

By Miss Calkin:

Q. Mr. Foote, do you recall who requested you to advise Mr. Doolittle of the matters set forth in your first telegram to him?

A. No, I do not remember.

Mr. Bosley: Which one was marked 6 and which one 7?

Mr. Gerdes: What is the date of the letter?

Miss Calkin: Both December 18th. [414]

The Examiner: Both December 18th. The first one apparently is the shorter one, advises Mr. Doolittle of the proposed action of the Board and the second one, apparently after the meeting, advises him of the action taken at the Board meeting.

By Miss Calkin:

Q. Mr. Foote, I call your attention to the fact that both of these exhibits have written on them the name Mr. J. B. Black, which I believe, you stated

(Testimony of David Hiram Foote.)

was in your handwriting.

A. Yes, they were sent to him, yes.

Q. The copies were sent to him?

A. The copies were sent, yes.

Q. Do you now recall how the Board was advised that Mr. Fogarty's election as a director would be acceptable to the North American Company as one of its representatives on your Board at this time?

The Witness: I didn't hear that.

The Examiner: Read it, please.

(The question referred to was read by the reporter as above recorded.)

A. No, I can't recall, but undoubtedly the president so stated. He would be the one that—customarily in our activities he would be the one to give any information of that kind to the Board. [415]

By Miss Calkin:

Q. Now, Mr. Foote, I hand you what has been marked for purposes of identification Commission's Exhibits 8, 9, 10 and 11, and will ask you if you can identify those documents.

Mr. Phleger: Now, before going to that, counsel, may I inquire whether or not you have copies or originals of any communications passing from anyone connected with the North American Company to anyone connected with the Pacific Gas and Electric Company at or about the time that Exhibit 6 and 7 were sent?

(Testimony of David Hiram Foote.)

Miss Calkin: I don't understand your question, Mr. Phleger. You mean any other——

Mr. Phleger: Any communications from anyone connected with the North American Company to anyone connected with the Pacific Gas and Electric Company at or about the time of Exhibit 6 or 7 to which the material 6 or 7 might have been a reply?

Miss Calkin: Yes, I have two wires of December 17, 1935, which I intend to introduce when Mr. Black is on the stand.

Mr. Phleger: Don't you think that if those were shown to the witness it might refresh his recollection as to the occasion for his sending Exhibits 6 and 7?

Miss Calkin: Well, it might, except that he may never [416] have seen these wires.

Mr. Phleger: Well, maybe he did.

Miss Calkin: I mean they are wires between Mr. Doolittle and Mr. Black.

Mr. Phleger: Yes.

Miss Calkin: But I will be glad to show him the copies I have here.

Mr. Phleger: It is rather obvious his wires were an answer to some inquiry.

Miss Calkin: I won't introduce these at this time. I will hand these to you for the purpose of refreshing your recollection.

Mr. Phleger: Did you ever see those?

The Witness: I can't say that I did; no, I

(Testimony of David Hiram Foote.)

couldn't say that I did. I don't recollect ever having seen them.

Miss Calkin: Now, I believe my last question in reference to Commission's Exhibits——

The Examiner: 8 to 11.

Miss Calkin (continuing) —8 to 11, inclusive, is unanswered.

The Examiner: The witness was examining them.

A. Yes, I remember these letters.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 8 to 11, inclusive.

Mr. Phleger: No objection. [417]

The Examiner: The photostat of letter of January 6, 1936 of F. H. Piske, secretary of the North American Company, to Mr. D. H. Foote, vice-president, secretary and treasurer of P. G. & E., will be received in evidence and marked Commission's Exhibit 8.

(The photostat of letter referred to was marked Commission's Exhibit No. 8 and was received in evidence.)

The Examiner: Photostat of letter of January 16, 1936 from D. H. Foote, vice-president, on letterhead of P. G. & E. to F. H. Piske, secretary of the North American Company, received in evidence and marked Commission's Exhibit 9.

(The photostat of letter referred to was marked Commission's Exhibit No. 9 and was received in evidence.)

(Testimony of David Hiram Foote.)

The Examiner: Photostat of copy of letter of February 17, 1936 from F. H. Piske to D. H. Foote, and so forth, will be received in evidence and marked Commission's Exhibit 10.

(The photostat of copy of letter referred to was marked Commission's Exhibit No. 10 and was received in evidence.)

The Examiner: Photostat of a copy of letter March 12, 1936 from D. H. Foote, vice-president, and bearing a typewritten heading of Pacific Gas and Electric Company, to F. H. Piske, secretary of the North American Company, will be received in evidence and marked Commission's Exhibit No. 11.

[418]

(The photostat of copy of letter referred to was marked Commission's Exhibit No. 11 and was received in evidence.)

By Miss Calkin:

Q. Mr. Foote, was Commission's Exhibit 8, which is the letter dated January 6, 1936, from Mr. Piske to yourself the first request which you had received from any representatives of the North American Company for copies of the minutes of the meetings of your Board? A. Yes.

Mr. Phleger: Will you read that, please?

(The question and answer referred to were read by the reporter as above recorded.)

(Testimony of David Hiram Foote.)

By Miss Calkin:

Q. And Commission's Exhibit 9, which is a letter from yourself to Mr. Piske, dated January 16, 1936, is your reply to that request?

A. (Examining document) It is.

Q. And Commission's Exhibit No. 10, being Mr. Piske's letter to you of February 17, 1936, is a second request by the secretary of North American Company for copies of the minutes of the meetings of your Board, is it not?

A. Not exactly the second request, but a sort of followup letter asking what the decision had been as to the first letter, the first two letters. [419]

Q. Now, what did you do in reference to complying with the request made in the first letter of January 6, 1936?

A. I talked with Mr. Black about it.

Q. And what did he tell you?

A. Well, we had never done it, and we—I wondered whether we should do it, and when the next letter, followup letter came in, I talked to Mr. Black again and we thought it all over and couldn't see any objection particularly to it, although, of course, if it was asked for by a large number of people it would manifestly be not impossible but certainly very—make a great deal of unnecessary work.

Q. Well, now, are all of the directors of the company furnished with copies of the minutes of the meetings which they attend?

A. No, they are not.

(Testimony of David Hiram Foote.)

Q. Well, then, did Mr. Earl, during his lifetime, receive from you copies of the minutes of the meeting of the Board or Executive Committee?

A. He received—I think he received copies of the minutes of the Executive Committee but not of the Board.

Q. Well, did all other members of the Executive Committee likewise receive copies?

A. They could receive them if they desired, but they haven't asked for them. They are right there; they are read to them the next meeting so they don't want them. [420]

Q. Well, do you know why Mr. Earl requested copies?

A. He sent them to New York, I believe, sent them to the North American Company.

Q. It was your understanding, then, that during Mr. Earl's directorship and service on the Executive Committee that the North American Company received copies of the minutes of the Executive Committee from Mr. Earl?

A. My understanding was that Mr. Earl represented the North American Company and did send those copies to them.

Q. Well, during the period from Mr. Earl's death until the date of these letters in January, 1936, did North American receive copies of the minutes of the meeting of the Board or of the Executive Committee of your company?

(Testimony of David Hiram Foote.)

A. After Mr. Earl's death there was nobody went on the committee to represent them, the Executive Committee, and I was requested, as I recollect, by the president, to send the same papers to the eastern directors as Mr. Earl had sent or, I guess, to the North American Company that Mr. Earl had sent, but I always thought that the proper way to do was to send them to the eastern directors because they were directors and were not—did not attend the meetings and I thought they were entitled to knowledge as to what took place at those meetings.

Q. Well, do you now, and have you for some period of time furnished North American with copies of the minutes of [421] the meetings of the Executive Committee?

A. I have—for a time, I think, for a short time they were sent—maybe they might have been sent to Mr. Piske but with the idea that he would have them on file for examination by the eastern directors, the two eastern directors. At one time there I decided that they should be sent to the directors and I sent them after that to Mr. Fogarty.

Q. So that now and for some period of time Mr. Fogarty has received not only copies of the minutes of the Board, but copies of the minutes of the Executive Committee?

A. No; he has received copies of the minutes of the Executive Committee, but the copies of the

(Testimony of David Hiram Foote.)

minutes of the Board were not sent until after this correspondence took place.

Q. But since this correspondence he has received copies of the minutes of both the Executive Committee and the Board? A. Yes.

Q. Although North American has not had, since Mr. Earl's death, any representative on the Executive Committee? A. That is right.

Q. But these requests for minutes were not made by Mr. Fogarty in his capacity as director, but were made by the North American Company through its secretary, Mr. Piske?

A. Yes, that is right, by Mr. Piske, the secretary; [422] he made the request.

Q. But, I believe, if I understand your testimony correctly, in spite of the fact that the requests came from Mr. Piske as secretary of the North American Company, the minutes of both the Executive Committee and the Board of Directors are sent by you to Mr. Fogarty?

A. Yes. In other words——

The Examiner (interposing): And not to the company?

The Witness: Not to the company. In other words, I thought that the directors were the proper ones to receive those things, and not the stockholder. We don't send those things to stockholders. It would be manifestly impossible to send our minutes to 95,000 stockholders, you know and, of course,

(Testimony of David Hiram Foote.)

they being members of the Board I thought they were the proper ones to receive them.

By Miss Calkin:

Q. Well, now, is your reason for sending copies of the minutes of the Executive Committee when North American has no representative on that committee solely that Mr. Hockenbeamer requested you to send to North American everything which Mr. Earl had been in the habit of sending?

A. I have forgotten whether Mr. Hockenbeamer asked me to send them to North American or to the directors, but that, yes, yes, that is substantially true, I believe.

Q. Mr. Foote, I hand you what has been marked for [423] purposes of identification four photostatic copies of letters exchanged between you and Mr. Piske which have been marked for identification as Commission's Exhibits 12 to 15, inclusive, and will ask you if you can identify those documents?

A. (Examining documents) Yes, these are all right. These are all—I can identify all of these. I remember writing them; I remember receiving them and writing them.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 12 to 15, inclusive.

Mr. Phleger: No objection.

The Examiner: Photostat of a letter headed "Pacific Gas and Electric Company" dated April 20, 1930, to F. H. Piske, 60 Broadway, New York,

(Testimony of David Hiram Foote.)

signed D. H. Foote, will be received in evidence and marked Commission's Exhibit No. 12.

(The photostat referred to was marked Commission's Exhibit No. 12 and was received in evidence.)

The Examiner: Photostat of a copy of letter of April 29, 1936 to F. H. Piske, secretary, to D. H. Foote, vice-president of Pacific Gas and Electric Company, will be received in evidence and marked Commission's Exhibit No. 13.

(The photostat referred to was marked Commission's Exhibit No. 13 and was received in evidence.)

The Examiner: Photostat of a letter on letterhead of Pacific Gas and Electric Company to Mr. F. H. Piske, secretary of the North American Company, signed D. H. Foote, vice-president, [424] dated May 5, 1936, Commission's Exhibit 14.

(The photostat of letter referred to was marked Commission's Exhibit No. 14 and was received in evidence.)

The Examiner: Photostat of a letter of September 22, 1936, on the letterhead of Pacific Gas and Electric, to Mr. F. H. Piske, care of North American Company, signed D. H. Foote, vice-president, will be received in evidence and marked Commission's Exhibit 15.

(Testimony of David Hiram Foote.)

(The photostat of letter referred to was marked Commission's Exhibit No. 15 and was received in evidence.)

By Miss Calkin:

Q. Mr. Foote, these letters would indicate that from March until September of 1936, at any rate, you sent copies of the minutes of the meetings of the Board to Mr. Piske as secretary of North American Company.

A. Yes, but in doing so, I always had in mind, and I know the president also always had in mind that they were sent because officers of that company were directors of our company. In other words, if any large stockholder, for instance, Sun Life of Canada, if they had a representative on our Board of Directors, they would be accorded the same courtesy.

Q. Well, if any stockholder who did not have representation on your Board requested copies of the minutes of your Board or of your Executive Committee would that request be [425] complied with?

A. Depending largely upon the ownership, the size of the ownership.

Q. Well, do you recall when you first began sending copies of the minutes of the meetings of the Board and Executive Committee to Mr. Fogarty?

(Testimony of David Hiram Foote.)

A. I don't recall the exact date, but I didn't send them prior to Mr. Earl's death.

Q. Now, I hand you what has been marked for purposes of identification Commission's Exhibits Nos. 16 and 17 and will ask you if you can identify those documents.

A. (Examining documents) Yes, this is all right. These are both genuine.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 16 and 17.

The Examiner: Without objection the photostat of a letter dated March 31, 1937, on letterhead of Pacific Gas and Electric Company to Mr. F. H. Piske, secretary of the North American Company, signed D. H. Foote, vice-president, will be received in evidence and marked Commission's Exhibit 16.

(The photostat of letter referred to was marked Commission's Exhibit No. 16 and was received in evidence.)

The Examiner: Photostat of a letter on letterhead of Pacific Gas and Electric dated September 15, 1939, to Mr. J. F. Fogarty, 60 Broadway, New York, signed D. H. Foote, [426] vice-president, will be received in evidence and marked Commission's Exhibit 17.

(The photostat of letter referred to was marked Commission's Exhibit No. 17 and was received in evidence.)

(Testimony of David Hiram Foote.)

By Miss Calkin:

Q. Mr. Foote, is Commission's Exhibit No. 17 a typical form of the letter regularly sent by you with the minutes of the meeting of the Board?

A. May I see it?

(The document was handed to the witness)

Yes, it is. (Examining document)

Q. And that letter indicates that a copy of it was sent to Mr. Freeman. Is that customarily done?

A. I always send that under separate cover because he is the other New York director.

Q. Mr. Foote, do you know who the regular banks were for the Western Power Corporation system? A. I do not.

Q. Prior to 1930?

A. No. I never had anything to do with Western Power Corporation.

Mr. Bosley: The Western Power Corporation of New Jersey or the Western Power Company?

The Witness: No; the Great Western Power Company of [427] California is a different corporation altogether. The corporation is the eastern.

Miss Calkin: I was referring to the Western Power Corporation which was some holding company of the New York Corporation.

By Miss Calkin:

Q. Mr. Foote, who were the first bankers of the Applicant; that is, who were the first persons, bank-

(Testimony of David Hiram Foote.)

ing houses, active in the underwriting of Applicant's securities?

A. Who were the first? You mean how far back?

Q. Well, from the very beginning, the very inception of the company, who handled its first financing?

A. My recollection was it was N. W. Halsey & Company.

Q. Do you know Mr. Halsey?

A. Yes, I have met him quite a number of times, not intimate at all.

Q. Was he a Californian?

A. Occasionally he came to California.

Q. Do you know where the principal office of N. W. Halsey & Company was located?

A. New York City.

Q. Who succeeded N. W. Halsey & Company as the banker for the Applicant?

A. I think their business was taken over by the National City Bank. [428]

Q. National City Company?

A. The National City Company, yes sir.

Q. And about when did that occur?

A. Oh, I can't remember those dates; a long time ago.

Q. Do you know how N. W. Halsey & Company became interested in the Applicant's financing, the contacts that banking firm had with your company?

(Testimony of David Hiram Foote.)

A. Through John Martin and E. J. deSabla, the early—you might call them promoters.

Q. Well, who did you first become acquainted with in the National City Company organization?

A. The National City Company organization? Let me see. I knew George Weeks very well. He was with N. W. Halsey & Company. I don't know whether he went to National City Company or not; it seems to me that he did.

Mr. Bosley: Yes.

By Miss Calkin:

Q. Did Mr. Weeks spend a great portion of his time in California? Was he a resident of California?

A. Yes, all of his time was spent here in the early days. Later he went to New York and went to London, I believe, as a representative of the National City Company. I haven't seen him for many years.

Q. He was at one time a director of your company? [429]

A. Yes, in the very early days.

Q. Well, now, who succeeded Mr. Weeks as a representative of the National City Company in connection with your business, if you know?

A. I guess it was Stanley Russell. I think he was with the National City Company.

Mr. Bosley: Do you remember Mr. Conellen?

(Testimony of David Hiram Foote.)

By Miss Calkin:

The Witness: No, I don't remember Mr. Conellen.

Q. How frequently did you see Mr. Russell?

A. Mr. Russell?

Q. Yes. Did he reside in California?

A. No, I think not. My first close acquaintance with Mr. Russell was when our first refunding mortgage was prepared.

Q. When was that?

A. 1920, wasn't it? Along in there.

Mr. Bosley: Yes.

The Witness: He came out here.

Mr. Bosley: You are referring now to Mr. Stanley Russell, aren't you?

The Witness: Stanley Russell.

Mr. Bosley: Yes.

The Witness: And he came out here, and he and Mr. Hockenbeamer and myself formulated the first refunding [430] mortgage, went over all the provisions and they were afterwards submitted to our general counsel, Mr. Bosley, and put in shape by him.

By Miss Calkin:

Q. Would you say that from that time now until National City Company went out of the investment banking business that Mr. Russell was the primary representative of the National City Company in

(Testimony of David Hiram Foote.)

connection with your business?

A. Yes, and later he was with Lazard Freres—wasn't he?

Q. So that most of the negotiations between the Applicant and its principal underwriter from the period of 1920 until the last financing headed by National City Company which, I believe, was in 1931, were carried on with Mr. Russell?

A. Yes, yes, Mr. Russell, I believe, yes, but he came out here, and those negotiations were carried on by the president with Mr. Russell, although I knew of them, and occasionally sat in on the conferences, but not very often.

Q. Now, I believe later testimony will show that the Applicant had two pieces of financing after 1930, or after North American acquired its stock interest in the Applicant and prior to the time National City Company went out of business, namely, a twenty-five million dollar bond issue in July of 1930, and a twenty-five million dollar bond [431] issue in January of 1931. Do you know who formulated those two pieces of financing?

A. I think Mr. Hockenbeamer.

Q. Do you know whether or not Mr. Hockenbeamer conferred with North American regarding these two issues? A. I don't know that.

Q. Do you know who selected National City Company to be the principal underwriter in these two pieces of financing?

(Testimony of David Hiram Foote.)

A. Mr. Hockenbeamer. Mr. Hockenbeamer, he suggested that they be made the underwriters and that was authorized by the Board of Directors.

Q. Did you have anything to do with the selection of National City Company as syndicate manager or with the selection of any members of the syndicate which underwrote those two issues?

A. No, I did not; although I knew about it, but I had no voice in it.

Q. Do you know whether or not the Board or Mr. Hockenbeamer or National City Company selected the syndicate members?

A. Do I know what?

(The question referred to was read by the reporter as above recorded.)

The Witness: As far as I know they were selected [432] jointly by Mr. Hockenbeamer and the underwriters and the main underwriter.

By Miss Calkin:

Q. That is the National City Company?

A. The National City Company, yes. I believe that is unquestionably a fact.

Q. Now, who carried on——

A. (interposing) And then Mr. Hockenbeamer recommended those selections to the Board of Directors.

Q. Now, who carried on the negotiations between the Applicant and National City Company

(Testimony of David Hiram Foote.)

in respect to those two issues?

A. Mr. Hockenbeamer.

Q. Had it been customary for Mr. Hockenbeamer during his entire presidency to handle such matters?

A. Yes, and even before he was president. You see, Mr. Hockenbeamer had large experience with N. W. Halsey & Company in New York City when he came to us. When he came out here in 1907 and '08 his experience was considered valuable in that financing, and it was valuable unquestionably. He was a very efficient man in that respect.

Q. Was he considered as having a greater knowledge of financial matters than Mr. Creed during Mr. Creed's presidency? A. Yes. [433]

Q. Mr. Creed relied upon Mr. Hockenbeamer?

A. Very largely, I think, so did Mr. Drum, Frank Drum before Mr. Creed.

Q. And when Mr. Hockenbeamer was president he handled the matters almost by himself?

A. Naturally he handled them, yes.

Q. And no one in the organization succeeded to Mr. Hockenbeamer's position, the position, that is, that Mr. Hockenbeamer had during the presidency of Mr. Drum and Mr. Creed?

A. Hardly, no; not exactly.

Q. Do you know whether or not anyone representing Blyth and Company expressed any dissatisfaction regarding the second position of Blyth and

(Testimony of David Hiram Foote.)

Company in the two issues of 1930 and 1931?

A. No, I do not.

Q. So far as you know, Blyth and Company never made any effort to get the leadership of your business away from National City Company?

A. Oh, there were several bond houses that wanted to get the business.

Q. That was in 1930 and '31?

A. Oh, absolutely. They went to Mr. Hockenbeamer. I know he talked to me about it. There were several houses who wanted to bid for the bonds but we had always done [434] business with the National City Company, and our directors—my recollection is that our Board thought it was a good idea to do business with the same people.

Q. Well, now, your company didn't do any more financing from January of 1931 until March of 1935, did it, Mr. Foote?

A. Well, I think that is right, yes.

Q. And in 1935 you had an issue of forty-five million dollars of principal amount of bonds?

A. Yes sir.

Q. Now, was National City Company still in the investment banking business at that time?

A. I believe so, yes; no. The City Bank Farmers Trust Company, was it? Well, National—oh, the National City Company? Yes, yes, I believe so, although—now, wait a minute, wait a minute.

Q. I think, if you refresh your recollection——

(Testimony of David Hiram Foote.)

A. (interposing) I am not quite sure on that fact.

Q. The Banking Act of 1933 had been passed by that time which forced the divorcement of investment banking business from commercial banking business? A. That is right.

Q. I believe it is correct that National City Company after the passage of that Act and prior to the March 1935 issue had ceased to be engaged in the investment banking [435] business.

A. I remember something about that; that is true, I think.

Q. Now, do you recall who headed the syndicate which purchased the forty-five million dollar issue put out by your company in March of 1935?

A. I can't just remember that. I could identify it if I could see the documents, but I can't——

Q. (interposing) Well, do you recall the first piece of business which Lazard Freres & Company headed for your company?

A. It was about that time. Stanley Russell represented them, I know, but I can't just remember when that change, when that took place.

Mr. Bosley: It was in the spring of 1935 when we started to refund the earlier issues.

The Witness: Yes, and Lazard Freres had taken the business at that time.

Mr. Bosley: And Stanley Russell represented Lazard Freres?

The Witness: Yes, that is right.

(Testimony of David Hiram Foote.)

By Miss Calkin:

Q. In other words, after National City Company went out of the investment banking business Mr. Russell severed his association with the National City Company and became [436] associated with Lazard Freres & Company?

A. I believe that is a fact, yes sir.

Q. Now, what do you know about Lazard Freres & Company getting the leadership of the syndicate which purchased the forty-five million dollar issue of March 1935?

A. Very little, little or nothing about it. I don't know how it happened that they—except old associations. They were the natural—they were the successor of the former underwriters and Mr. Hockenbeamer knew Mr. Russell very well and he was here, but at the same time there were many others who tried to dig in and get the business.

Q. Well, who would you say was responsible for the selection of Lazard Freres & Company as the syndicate manager of that issue?

A. Mr. Hockenbeamer.

Q. Well, was there any discussion before the Board as to who should head that business?

A. There was a discussion before the Executive Commission.

Q. Were all the members of that committee in accord with the desirability of Lazard Freres having that business? A. Yes.

(Testimony of David Hiram Foote.)

Q. And that firm was recommended by Mr. Hockenbeamer? A. Yes.

Q. Do you know whether or not Mr. Hockenbeamer [437] consulted with North American people before he selected Lazard Freres as Syndicate manager of that issue? A. I do not.

Q. Do you know whether or not North American participated in the formation of the refinancing plan which was consummated by the issuance of the forty-five million dollars in bonds?

A. I do not.

The Examiner: Will this be a convenient time for a morning recess?

Miss Calkin: All right.

The Examiner: Are you on the same line of examination?

Miss Calkin: No. I have a great deal more.

(Whereupon a short recess was taken after which proceedings were resumed as follows:) [438]

The Examiner: We will resume the hearing.

By Miss Calkin:

Q. Mr. Foote, do you recall the names of any of the banking houses that attempted to get the leadership of the Applicant's financing in 1935?

A. I only know of that from conversations with Mr. Hockenbeamer. I don't know that the names were mentioned, but I know he told me there were

(Testimony of David Hiram Foote.)

a number of different houses that were trying to dig in, trying to get the business.

Q. You didn't have any personal contacts with the representatives of any of them?

A. I did not.

Q. Do you know whether or not Mr. Hockenbeamer conferred with North American representatives regarding the selection of Lazard, Freres & Co.? A. I do not.

Q. Did you ever discuss with any representative of the North American Company the leadership of this piece of business? A. I did not.

Q. Do you know of any correspondence between the Applicant and the North American Company relating to this matter? A. I know of none.

Q. Do you know whether or not there was any dissatis- [439] faction expressed by anyone concerning the manner in which the March 1935 issue was handled? A. I never heard of any.

Q. Are you acquainted with Mr. Blyth, Charlie Blyth? A. Yes.

Q. How long have you known him?

A. Oh, a great many years; not intimately.

Q. Did Mr. *Black* ever approach you in an effort to get the leadership of Applicant's financing for his firm in the early part of 1935?

Mr. Gerdes: Read the question, please.

(The question referred to was read by the reporter as above recorded.)

(Testimony of David Hiram Foote.)

Miss Calkin: I meant Mr. Blyth instead of Mr. Black. A. No, he did not.

By Miss Calkin:

Q. Has Mr. Blyth ever talked to you about the leadership of his firm? A. No.

Q. Are you acquainted with any other members of the Blyth & Co. organization? A. Yes.

Q. Which ones?

A. Well, Mr. Bernard Ford, and also Mr. Bashore.

Q. Mr. Bashore is in the New York office of Blyth & Co.? [440]

Q. You knew him prior to the association of the New York office with that firm? A. No.

Q. You knew him afterwards?

A. I did not know him prior to Blyth getting the underwriting on those bonds.

Q. How long have you known Mr. Ford?

A. Oh, since he was a small boy, but casually only.

Q. Did Mr. Ford ever approach you in an effort to get the leadership of the Applicant's financing for Blyth & Co.?

A. No. I knew Mr. Ford's father and mother.

Q. Did he ever discuss with you the question of his firm heading the business of the Applicant?

A. No, he never did.

Q. Did Mr. Hockenbeamer ever tell you whether or not either Mr. Fogarty or Mr. Freeman, or Mr.

(Testimony of David Hiram Foote.)

Black advised him as to whether Lazard Freres & Co., or some other house, should head the first piece of Applicant's financing in 1935?

A. I think not; I am quite sure he did not.

Q. Now, I believe later testimony will show that the next piece of financing of the Applicant was a $30,000,000 issue in June of 1935, and in that issue Blyth & Co. headed the business on the West Coast and participated in the management fee.

Do you know anything about why Blyth & Co.'s position [441] was improved in the second issue in 1935?

A. I can't say that I do, except that they were a western, he was a western man, and it was a western house, and they had financial standing, and we had known them for many years.

Q. Do you know whether or not any directors of the Applicant were endeavoring to get Blyth & Co.'s position in this business improved about this time? A. No, I do not.

Q. Did anyone ever tell you that Blyth & Co.'s representatives in New York City were endeavoring to get North American representatives to bring pressure to bear upon Mr. Hockenbeamer to get Blyth & Co. the leadership of that business?

A. No, I never heard of it.

Q. Did Mr. Hockenbeamer ever tell you that Blyth & Co.'s position was improved in the June 1935 financing of the Applicant by reason of the requests made of him by North American people?

(Testimony of David Hiram Foote.)

A. He never told me that. I don't know anything about it.

Q. Had you ever discussed the leadership of Applicant's financing with Mr. Black at this time, that is, in the early part of 1935?

A. I think not. We might have talked about it when [442] he was carrying on negotiations. He may have spoken to me about it.

Mr. Phleger: Will you make clear to the witness that the time you are questioning him about is in July 1935 before Mr. Black became president?

Miss Calkin: In the early part of 1935.

A. I cannot recollect. It was very casual, if at all.

By Miss Calkin:

Q. Is it your best judgment now that you did have some discussions with Mr. Black prior to the time he became president of Applicant regarding who should head the Applicant's financing?

A. No. I never had any discussion with Mr. Black prior to the time he became president.

Q. You never had any discussions with him at all? A. Not at all.

Mr. Phleger: That is, prior to November 20, 1935, when he was elected president.

The Witness: Never.

By Miss Calkin:

Q. The first piece of financing after Mr. Black became president was in March of 1936, I believe,

(Testimony of David Hiram Foote.)

at which time the Applicant sold a $90,000,000 issue of bonds to an underwriting syndicate headed by Blyth & Co.? [443] A. That is right.

Q. What do you know about the change of leadership from the September 1935 issue of $20,000,000, which was headed by Lazard Freres & Co., to the issue in March 1936 which was headed by Blyth & Co.?

A. Only that Mr. Black reported to the Executive Committee, or the Board of Directors, perhaps to both of them, that he felt that Blyth & Co. would be more suitable. They were a western house, a California house, and we had done business with them, and they are fine people, and that they had a selling organization that was probably second to none in the United States, extending all over the country.

Q. Did you ever hear any other directors express an opinion as to their feeling in regard to whether Blyth & Co. or Lazard Freres & Co. should have the leadership?

A. I think all the members were in accord with that idea that expressed themselves, and I think a number did.

Q. But that expression from them came only after Mr. Black's recommendation that Blyth & Co. head the business? A. I think so; yes.

Q. Prior to the selection of Blyth & Co. as the syndicate manager of the first piece of financing in 1936, did any representative of Blyth & Co. approach you in an effort to get business for that firm?

(Testimony of David Hiram Foote.)

A. No, they did not. [444]

Q. Did any member of the Board ever tell you that representatives of Blyth & Co. had approached them with the same motive in mind? A. No.

Q. Did Mr. Black ever tell you that his choice of Blyth & Co. as syndicate manager for the March 1936 issue of the company was favorable to the North American people? A. No, he did not.

Q. Do you know anything about how Dillon Read & Co. got a substantial participation in the March 1936 issue? A. No, I do not.

Q. Was their participation discussed at the Board? A. I think not.

Q. You don't know who selected them as syndicate members?

A. No. I think it was done jointly by Mr. Black and Mr. Blyth.

Q. You never heard anyone say that Dillon Read & Co. were included in that syndicate at the request of the North American Company?

A. No, I never did.

Q. Do you know why Dillon Read & Co., Kuhn-Loeb and Morgan, Stanley & Co. did not participate in the May and October issues of the Applicant?

A. I don't. [445]

Q. I believe later testimony will develop that Applicant issued and sold privately $15,000,000 worth of bonds in February of 1938. Do you know who determined that that issue would be privately placed rather than publicly sold?

(Testimony of David Hiram Foote.)

A. I think it was done after general discussion. The president brought up the question before the Executive Committee and it was agreed to and finally put in formal order, you know.

Q. Do you know whether or not the North American Company played any part in the determination to have a private placement rather than a public sale of those bonds?

A. No, I never heard of it.

Q. Do you know of any instance in which North American has been consulted in reference to the financial policies of the Applicant?

A. I do not.

Q. And those matters, that is, the financial policies of the company are, generally speaking, formulated by the president? A. Yes.

Miss Calkin: I think that is all.

The Examiner: Redirect examination?

Redirect Examination

By Mr. Phleger:

Q. The last question, Mr. Foote, was to the effect that the financial policies of the company are generally [446] formulated by the president, are they not, and your answer was "Yes". A. Yes.

Q. Does the president make it a custom to discuss at considerable length with the Executive Committee and with the Board also the major matters of financial policies? A. Yes, that is a fact.

(Testimony of David Hiram Foote.)

Q. Now, you have been asked in various forms and in various ways, whether or not action has been taken by the Board of Directors, or the Executive Committee, or officers of the Applicant, which might not be in accord with views of the North American Company. Have you ever heard at any time, with the single exception of the dividend action in 1933 that you have testified to, the name of the North American Company mentioned in connection with any action under consideration, or after action had been taken on the part of Pacific Gas and Electric Company?

A. No; I can't recall any discussions of that kind at all. It might have been mentioned. I can't say. But they had directors on the Board and it might have been mentioned that those directors were agreeable to this action, but I can't remember that distinctly. No point was made of it anyway.

Q. You have no recollection of it ever having been stated in the meetings of the Executive Committee, or the [447] Board of Directors, that the North American had this view or that view?

A. No, I do not. I don't remember any such statement.

Q. Would you have remembered it if such a statement had been made?

A. I think so; yes.

Q. Now, with respect to Mr. Black's incumbency, has any change taken place in the general organiza-

(Testimony of David Hiram Foote.)

tion of the company since Mr. Black became president? A. I think not; no important change.

Q. You have seen Exhibit 9, have you not, the organization chart of the company?

A. Yes; I am familiar with it.

Q. Has any change been made in the organization of the company since Mr. Black became president?

A. I think not.

Q. Who set up the various committees that are shown on that Exhibit?

A. My recollection is that, generally speaking, this organization scheme originated at the time that Mr. Creed was president.

Q. That was during the period 1920 to 1925, was it not? A. Yes. [448]

Q. 1926, rather.

Mr. Bosley: 1927.

Mr. Phleger: 1927.

The Witness: Yes.

By Mr. Phleger:

Q. And that organization, in the method of operation through the Executive Committee, and other committees of officers, has remained unchanged since Mr. Creed's administration to the present date?

A. I think so; yes. If there were any changes they have been very minor.

Q. Has Mr. Black made any change that you know of in any of the major features of operation,

(Testimony of David Hiram Foote.)

management, or policy since he has become president? A. I think not.

Q. The policies that are in effect now are the same that have been in effect for many years?

A. Yes.

Q. Now, Mr. Foote, various letters passing between yourself and Mr. Piske, Mr. Doolittle and Mr. Fogarty have been introduced in evidence. Am I correct in stating that Commission's Exhibit 6, consisting of a telegram dated December 18, from you to Mr. Doolittle, and Commisson's Exhibit 7, consisting of a telegram dated December 18, 1935, to Mr. Doolittle were both sent by you at the request of someone else? [449]

A. Yes, I believe so; oh, yes, undoubtedly.

Q. All of these letters that were exchanged by you have to do with your forwarding to Mr. Piske or to Mr. Doolittle or to Mr. Fogarty certain information which they had previously requested, is that not so? A. Yes.

Q. And the inception of this correspondence was a letter to you from Mr. Piske, was it not?

A. Yes.

Q. I am showing to the witness a letter from himself to Mr. Piske, dated December 31, 1935, reading as follows:

"Pursuant to your letter of December 28 I am enclosing list of directors and officers of Pacific Gas and Electric Company as of the present date"—and so forth.

(Testimony of David Hiram Foote.)

This letter of Mr. Piske's of December 28, referred to in your letter, was the inception of your correspondence, was it not? A. Yes.

Q. And all of the subsequent letters had to do with your acceding to various requests by Mr. Piske, or Mr. Fogarty, or Mr. Doolittle, for information which you thereafter forwarded them?

A. That is right.

Q. Now, when Mr. Piske requested a copy of the minutes of the meetings of the Board of Directors, by his [450] letter of January 6, 1936, Commission's Exhibit 8, you did not immediately accede to his request, did you? A. I did not.

Q. You referred the matter to the president of the company? A. Yes.

Q. And it was a considerable time, was it not, before that request was finally acceded to?

A. Yes.

Q. I show you Commission's Exhibit 11, being a letter from you to Mr. Piske, dated March 12, 1936. A. Yes.

Q. Does that refresh your recollection as to when you finally acceded to the request?

A. Yes, it does.

Q. That is, some two or three months after the request was originally made?

A. Yes; that is right.

Q. Now, you have testified that copies of the minutes went forward after that request, first, to Mr. Piske? A. Yes.

(Testimony of David Hiram Foote.)

Q. But that later you changed the practice and forwarded the copies of the minutes directly to Mr. Fogarty? A. Yes.

Q. Is that correct? [451]

A. That is right.

Q. That has been your practice for some time since? A. Yes.

Q. With respect to the increase of the dividend of the company from the rate of 6 percent per annum to 8 percent per annum, which took place in the last quarter of 1936, you have testified that the recommendation for that increase came from Mr. Black. That is correct, is it not?

A. I believe it is; yes, sir.

Q. Did he present at this time financial statements to the Board?

A. He did. That is his practice always in connection with dividends.

Q. It is a fact, is it not, that in connection with all dividend declarations statements of earnings and of the financial condition of the company are presented to the Board of Directors?

A. Yes, that is a fact.

Q. And it is in connection with that that the president makes his recommendation?

A. Absolutely.

Q. Do you recall whether or not the earnings prior to the increase of the dividend rate in 1936 had been showing an increasing trend?

(Testimony of David Hiram Foote.)

A. Just prior, yes; just prior to that increase they [452] had. Well, now, I don't recall what the earnings were, but it must have been so.

Q. If you don't recall you just say so.

A. I don't recall that.

Q. Did you ever hear the name of North American mentioned in connection with any financing by the company? A. I think not.

Q. So far as you know, or your records show, has the North American Company ever participated in any financing of the Applicant?

A. No, they have not.

Q. With the exception of the contract between the Pacific Gas and Electric Company and the North American Company covering the acquisition by Pacific Gas and Electric Company of stocks of Great Western and San Joaquin, has the Pacific Gas and Electric Company ever entered into any contract with the North American Company?

A. I think not; no, they have not.

Mr. Phleger: That is all.

Miss Calkin: No further questions.

The Examiner: If there are no further questions you may be excused, Mr. Foote. Thank you.

(Witness excused.)

Mr. Phleger: I will call Mr. Hodges. [453]

Whereupon—

E. W. HODGES

was produced as a witness by and on behalf of the Applicant and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. What is your full name, Mr. Hodges?

A. E. W. Hodges.

Q. Where do you live? A. In Piedmont.

Q. California? A. California.

Q. How long have you lived in California?

A. Since 1905.

Q. What position do you now hold with the Pacific Gas and Electric Company?

A. I am Comptroller for the company.

Q. How long have you occupied that position?

A. Since 1927.

Q. What were your positions with the company prior to 1927?

A. Prior to my appointment as Comptroller in 1927 I was General Auditor of the company from December of 1920 to that date; and prior to December of 1920 I was in the general [454] auditing department in charge of the general books of account from April of 1917, which was the date I first entered the employ of the company.

Q. What has been your education?

A. I have attended grammar and high school,

(Testimony of E. W. Hodges.)

business college, various lecture and extension courses of the University of California.

Q. What positions did you occupy before you entered the service of the company?

A. My first employment was with the San Francisco-Oakland Terminal Railways in November of 1907. I was in the accounting department of that company from that date until April of 1917. At the time I left the service I was Chief Clerk for the department, and left there to enter the service of the Pacific Gas and Electric Company.

Q. So that the entire period of your employment has been with the San Francisco-Oakland Terminal Railways up until 1917, and since 1917 with the Pacific Gas and Electric Company?

A. That is correct.

Q. Will you describe generally your duties as Comptroller?

A. Well, I have charge of all of the accounting records of the company, the preparation of various reports and statements for regulatory commissions, and also all tax matters.

Q. Do you prepare all reports for the California [455] Railroad Commission and the Federal Power Commission?

A. Yes. They are prepared in my department.

Q. I show you Exhibit 9, which is a chart of the corporate organization. From it will you describe your position relative to the other officers, committees and the Board of Directors of the company?

(Testimony of E. W. Hodges.)

A. Well, I report directly to the president of the company. I am a member of the President's Advisory Committee, and also of the Appropriations Committee.

Q. What matters are considered at the meetings of the Advisory Committee?

A. All matters of any character that are important in respect to the company affairs.

Q. How frequently does the Committee meet?

A. Each Monday.

Q. Will you describe now generally the extent to which the affairs of the company are regulated by the Public Utilities Act and by the California Railroad Commission acting under it?

A. The California Railroad Commission, as presently constituted, was created by the people of this State by Constitutional amendment (Article XII, Section 22, adopted October 10, 1911). By further amendment of the Constitution (Article XII, Section 23) adopted the same date, "public utilities" as used in that section of the Constitution was [456] defined to include the several classes of business therein mentioned, and the Legislature was given the right to confer upon the Railroad Commission power to supervise and regulate such public utilities.

Pursuant to the latter authorization the Legislature (Extra Session 1911) enacted the "Public Utilities Act" which was approved by the Governor December 23, 1911 and became effective March 23, 1912. By this Act the Commission was given power

(Testimony of E. W. Hodges.)

to regulate and control all public utilities of the State, except that incorporated cities and towns of the State, including the City and County of San Francisco, retained the powers over public utilities which they had on March 23, 1912, with the privilege, however, of voting those powers to the Railroad Commission.

On November 3, 1914, Section 23 of Article XII of the Constitution was amended so as to provide, in effect, that the Legislature should have the power to confer upon the Railroad Commission jurisdiction over all the rates of all public utilities in the State, in incorporated cities and towns as well as in unincorporated territory. The authority thus conferred was exercised by the Legislature when it passed the Revised Public Utilities Act (enacted April 23, 1915, effective August 8, 1915).

Since 1915 the Public Utilities Act has been amended a number of times. In most instances such amendments were made [457] for the purpose of broadening the scope of the Commission's powers respecting the regulation and supervision of public utilities.

The Railroad Commission's jurisdiction to supervise and regulate public utilities, under the Constitution and laws of this State as now in effect, is very comprehensive. Such has been the fact since 1912 and particularly so since 1915 when its rate fixing powers were enlarged to include service in

(Testimony of E. W. Hodges.)

both incorporated cities and towns and unincorporated areas.

Stated in general terms the Commission's powers of regulation and supervision cover all matters relating to public utility rates, rules and regulations, contracts and practices, equipment, facilities, or service; additions to and betterments of plant, methods of manufacture, distribution, transmission, storage or supply; safety and health of employees, patrons, customers and the general public; standards for measurement of quantity, quality, pressure, voltage or other conditions pertaining to the supply of the product, commodity or service furnished, accuracy of meters and appliances for measurements and the testing of such appliances; accounting practices and procedure, including forms of accounts, records and memoranda to be kept and maintained; the exercise of franchise rights and the regulation of competition between utilities by means of certificates of public convenience and necessity; the ascertainment for each purpose specified in the Public Utilities [458] Act of the value of the property of each public utility in the State, and the making of revaluations to ascertain the value of additions, betterments, extensions and new construction; the sale, lease, assignment, mortgage or other disposition or encumbrance of the whole or any part of the property of a public utility necessary or useful in the performance of its duties to the public; the merger or consolidation, directly or indirectly,

(Testimony of E. W. Hodges.)

by a public utility of its properties, or any part thereof, with any other public utility; the purchase, acquisition, taking or holding by one public utility of any part of the capital stock of any other public utility *of any part of the capital stock of any other public utility* organized and existing under the laws of California; the issuance of stock, stock certificates or other evidences of interest or ownership, and bonds, notes or other evidence of indebtedness; the accounting for the disposition of the proceeds of all sales of securities; the assumption by a public utility of any obligation or liability as guarantor, indorser, surety or otherwise in respect of the securities of any other person, firm, or corporation; inspection of accounts, books, papers and records; hearing and deciding complaints respecting any act or thing done or omitted to be done by any public utility, including any rule, regulation or charge previously fixed by or for any utility, in violation, or claim to be in violation, of any order or rule of the Commission; to order reparation, [459] with interest from date of collection, on account of an unreasonable, excessive, or discriminatory charge; to require any public utility to file monthly reports of earnings and expenses and periodic or special reports concerning any matter about which the Commission is authorized by law to enquire or to keep itself informed on.

Under the provisions of the Public Utilities Act each public utility is required to furnish to the

(Testimony of E. W. Hodges.)

Commission in such form and detail as the Commission may prescribe, all tabulations, computations and all other information required by it to carry into effect any of the provisions of the Act, and to make specific answers to all questions submitted by the Commission; also, to deliver to the Commission upon request copies of any or all maps, profiles, contracts, agreements, franchises, reports, books, accounts, papers and records in its possession or in any way relating to its property or in any manner affecting its business, and also a complete inventory of all its property in such form as the Commission may direct.

The Railroad Commission has, since its inception, issued ninety-four (94) general orders; the majority of which are still in force and effect. The more important general orders which relate to gas and electric public utilities subject to its jurisdiction, are the following:

General Order No. 24-A. Relating to the preparation and filing of monthly reports showing receipts and disbursements from the sale of stock, bonds and other evidence of [460] indebtedness which have been authorized to be issued by the Commission.

General Order No. 28. Relating to the preservation of all records, memoranda and papers supporting each and every entry in certain of the general books of public utilities.

(Testimony of E. W. Hodges.)

General Order No. 46. Containing regulations governing the protection and guarding of moving machinery, power, transmission, and other mechanical equipment, ladders and stairways, and so forth.

General Order No. 48. Relating to the obtaining of consent of the Railroad Commission to withdraw entirely from public service or withdraw from public service in any portion of the territory served.

General Order No. 52. Governing the construction and operation of power and communication lines for the prevention or mitigation of inductive interference.

General Order No. 54. Prescribing the form and regulations governing the construction and filing of rates, rules and regulations affecting rates and service for gas utilities.

General Order No. 55. Prescribing the form and regulations governing the construction and filing of rates, rules and regulations affecting rates and service for electric utilities.

General Order No. 58-A. Containing detailed standards for gas service in the State of California and the maintenance [461] of records therein specified.

General Order No. 64-A. Containing rules and standards of overhead line construction (this General Order, together with the supplements thereto, comprises approximately 350 printed pages).

General Order No. 65. Relating to the filing by each public utility, whose operating revenues exceed

(Testimony of E. W. Hodges.)

$50,000 per year, of monthly financial and operating reports.

General Order No. 77-A. Containing regulations respecting the filing with the Railroad Commission of salary data, donations, contributions and subscriptions.

General Order No. 78. Governing the filing with the Commission of contracts for special services or providing deviations from filed rates, charges, classifications, contracts, rules or regulations.

General Order No. 94. Prescribing a uniform procedure for the design, operation, maintenance and inspection of all gas holders and hydro-carbon vessels operated by public utilities in the State of California, including the keeping of records and the making of reports as therein required.

The Examiner: Will you let the reporter have a copy of that statement you have just read? It may be helpful in transcribing the record.

The Witness: Yes. [462]

By Mr. Phleger:

Q. Mr. Hodges, has the company complied with the various orders, rules, regulations and provisions of the Public Utilities Act that you have described?

A. I believe it has fully done so; yes.

Q. It has regularly filed all of the reports called for by the Act and by the Orders? A. Yes.

Q. Will you describe briefly the uniform system of accounts prescribed by the Railroad Commission for electrical corporations which is now in effect?

(Testimony of E. W. Hodges.)

A. The present uniform system of accounts for electrical corporations was prepared by the Railroad Commission and made effective January 1, 1938. It is in practically all respects a copy of a similar classification of the Federal Power Commission. The classification, of course, covers all of the company's financial accounts, the balance sheet, profit and loss, and income accounts.

Of course, there is a complete set of primary accounts supporting each of the general accounts that I have mentioned.

Q. Now, while an existing or presently effective uniform system of accounts was made effective on January 1, 1938, there existed prior thereto, did there not, a uniform system of accounts which, while differing in some particulars, is substantially the same? [463]

A. That is correct. The classication in effect prior to that date for electrical corporations, I believe, became effective on January 1, 1923, and it likewise was an adaptation of the corresponding classification of the Federal Power Commission.

Q. When did the California Railroad Commission first prescribe a uniform system of accounts for electrical corporations?

A. The first classification was prescribed and became effective on January 1, 1913.

Q. And a uniform system has been described and in effect ever since that date?

A. That is correct.

(Testimony of E. W. Hodges.)

Q. Now, with respect to gas, has the Commission prescribed a uniform system of accounts?

A. There have been two uniform systems of accounts prescribed by the Commission. The first was effective January 1, 1913 and the second, I believe, became effective on January 1, 1924.

Q. Are the reports filed pursuant to the uniform system of accounts open to the public?

A. They are.

Q. Have there ever been, since you have been with the company, any increases or decreases in the recorded costs of investments, plants, properties, or intangible assets on the [464] books of the Applicant resulting from revaluing such assets?

A. No.

Q. Has the company ever recorded acquired properties upon its books at other than the cost thereof to the Applicant?

A. No. I think that——

Q. (interposing) Where the company——

Mr. Bosley (interposing): Just a moment.

The Examiner: Were you going to explain your answer?

A. (continuing) I think that maybe I might state in that respect that in the case of certain acquisitions the Railroad Commission has required that in recording the cost on our books that we should record it on the basis of original cost. The over-all effect of that, however, insofar as our total plant account is concerned, is that the cost, as re-

(Testimony of E. W. Hodges.)

corded in our accounts, does represent the actual cost to the company of all acquired properties. That is due to the fact that the account that they require us to keep, known as the Acquisition Adjustment Account, is also a part of the Plant and Property Account and in that account is carried the difference between the cost to the utility and the original cost of the property acquired.

Mr. Bosley: By "original cost" you mean the original cost to the company first putting it to public utility use?

The Witness: Yes.

Mr. Bosley: Under the regulations of the Commission? [465]

The Witness: That is correct.

By Mr. Phleger:

Q. When the company has acquired properties and paid for those properties in stock how has that acquisition been recorded?

A. Any property acquired by stock, where the company has issued its capital stock in the acquisition of the capital stock or properties of other companies, has never been recorded on its books at an amount in excess of its par value.

Q. That is irrespective of the market value of the stock so issued? A. That is correct.

Q. Is it fair then to summarize your testimony to this effect: That the company has never recorded acquired properties upon its books at other than the cost thereof, except when those properties were

(Testimony of E. W. Hodges.)

acquired in exchange for stock, the par value only of the stock was recorded, and in those cases where the Commission has directed that the original cost to the original owner be recorded, that the company has complied with such orders?

A. That is correct.

Q. Describe generally the depreciation policy of the Pacific Gas and Electric Company and state the allowance made by it for depreciation and maintenance.

I will withdraw that question. [466]

The Examiner: Are you going to consume some time with this next line of examination?

Mr. Phleger: Yes. I do not know whether you want to run until 12:30 or not.

The Examiner: I thought probably it would be convenient for you to stop in ten or fifteen minutes.

Mr. Phleger: It is a matter of your convenience. This is a suitable time to adjourn.

The Examiner: If you have any material there that you want to present you may proceed with it.

Mr. Phleger: There is quite a bit of it.

The Examiner: We will take our noon recess at this time and return at 2:00 o'clock.

(Whereupon at 12:10 p. m. a recess was taken until 2:00 o'clock p. m. of the same day.)

[467]

Afternoon Session

(Whereupon pursuant to the taking of recess, the hearing reconvened at 2:00 o'clock p. m.)

The Examiner: We will resume the hearing whenever you are ready.

Mr. Gerdes said he was not quite ready; whenever you are.

Mr. Gerdes: Yes.

The Examiner: Mr. Phleger?

Mr. Phleger: Yes.

Whereupon—

E. W. HODGES

was produced as a witness for and on behalf of the Applicant, and having been previously duly sworn, testified further as follows:

Direct Examination
(resumed)

Mr. Phleger: I will offer in evidence as Applicant's Exhibit 34 two sheets physically attached, the first headed "Pacific Gas and Electric Company and subsidiary companies, statement showing accumulation of depreciation reserve years 1909 to 1939 inclusive"; the second sheet headed "Pacific Gas and Electric Company and subsidiary companies, statement showing accumulation of depreciation reserve during years 1909 to 1939, inclusive." [468]

The Examiner: This document consisting, as Mr. Phleger *as* stated, of two pages will be received in evidence and marked Applicant's Exhibit 34.

(Testimony of E. W. Hodges.)

(The document consisting of two pages referred to was marked Applicant's Exhibit 34 and was received in evidence.)

By Mr. Phleger:

Q. Mr. Hodges, did you prepare Exhibit 34?

A. This exhibit was prepared by my department, yes.

Q. And are all of the facts and figures shown on it true and correct? A. They are.

Q. Will you state briefly for the record what it shows.

A. The statement shows the provision the company has made for depreciation commencing with the year 1909, the amount of the additions to the reserve, the amount of the charges to the reserve, and the balance in the reserve at the end of each year to and including the year 1939.

Q. It shows, does it not, that as of the end of 1939 that a reserve for depreciation amounted to $116,313,009? A. That is correct.

Q. Since you have been with the company has there been any substantial change in the policy or practice of accruing depreciation, maintenance, or in any other accounting policy or practice?

A. Up until the end of the year 1919 I believe it was— [469] the amount provided for depreciation was an amount determined on the basis of the judgment of the management as to the amount necessary for that purpose. In other words, the amount

(Testimony of E. W. Hodges.)

of the accrual was not determined on the basis of life tables——

The Examiner (interposing): On the basis of what?

The Witness: On the basis of life tables, or the estimated life of the property. Subsequent to that time, however, the accruals to the reserve had been based on the estimated life of the property.

In respect to the accounting for maintenance, I think I can say that the same policy had been pursued from the beginning until the present time.

Mr. Phleger: I offer in evidence as Applicant's Exhibit 35 a statement headed "Pacific Gas and Electric Company and subsidiary companies provision for maintenance and depreciation out of earnings showing percentages of gross operating revenue by years, 1906 to 1939 inclusive."

The Examiner: This schedule consisting of a single page will be received in evidence in the absence of objection and marked Applicant's Exhibit 35.

(The single page document referred to was marked Applicant's Exhibit No. 35 and was received in evidence.) [470]

By Mr. Phleger:

Q. Was Exhibit 35 prepared under your direction, Mr. Hodges? A. It was.

Q. It is true and correct? A. It is.

Q. Will you explain briefly what it shows.

(Testimony of E. W. Hodges.)

A. The statement shows for the years 1906 to and including the year 1939 the gross operating revenue of each year, the amount of the provision for maintennce, and the percentage of the gross operating revenue each year, the amount of the provision for depreciation and the percentage of gross operating revenue and the total provision for maintenance and depreciation, and percentage of gross operating revenue for each year.

Q. And it shows, does it not, Mr. Hodges, that for the year 1939 the total provision for maintenance and depreciation out of revenues amounted to $19,390,586 which was 18.092 per cent of the gross operating revenue for that year?

A. That is correct.

Q. Can you state generally how the provisions for depreciation and maintenance of Applicant compares with the provisions made generally in the public utility industry in this country?

A. Comparing this company's provision for maintenance [471] and depreciation with that of other utilities—I have a copy of a report submitted by the Director of the Public Utilities Division of the Securities and Exchange Commission to its chairman, dated June 29, '39, covering financial statistics for the year 1938 of 177 electric and gas subsidiaries of registered public utility holding companies.

This report shows that the average provision for maintenance and depreciation of the 177 companies was 5.81 per cent and 10.3 per cent respectively of

(Testimony of E. W. Hodges.)

their operating revenue for the year, or a total provision of 16.11 per cent.

During this same year this company and its subsidiaries made provision for maintenance and depreciation of their properties of 4.539 per cent and 14.176 per cent respectively of their operating revenue, or a total provision of 18.715 per cent.

I might also say that I have already prepared a statement showing the accumulation of the company's depreciation reserve by years, from 1909 to December 31, 1939, and this statement shows that the total additions to the reserve during this period aggregated the sum of $205,111,240.

The Examiner: That is the figure shown on Exhibit 34?

The Witness: Yes, I believe it is. The additions to the reserve include the reserves of acquired companies as of the date of their acquisition.

During the same period there was charged to the reserve [472] $88,798,230 representing cost of property retired after allowance for salvage and cost of removal. This left a balance in the reserve as of December 31st '39 of $116,313,009, equivalent to 16.13 per cent of the total plants and properties account of $720,982,452.

Referring again to the statistical report of the Public Utilities Division of the Securities and Exchange Commission for 1938 it shows that the aggregate depreciation reserve as of December 31, 1938 of 177 companies was 10.05 per cent of their total plant and property account.

(Testimony of E. W. Hodges.)

As of this same date the company's reserve was $107,350,588 or 15.2 per cent of its total plant and property account.

By Mr. Phleger:

Q. Mr. Hodges, has there been any change in policy or practice regarding depreciation maintenance or any other accounting policy or practice since the North American became a stockholder in the Pacific Gas and Electric Company in 1930?

A. None whatever.

Q. Have you ever received any advice, suggestion or direction from the North American Company directly or indirectly with respect to any of the matters coming under your charge in the Pacific Gas and Electric Company? A. No. [473]

Q. Has the Pacific Gas and Electric Company ever issued securities upon the basis of paper profits from intercompany transactions? A. No.

The Examiner: Will you read that question for me, please?

(The question referred to was read by the reporter as above recorded.)

By Mr. Phleger:

Q. Has the Pacific Gas and Electric Company ever issued securities upon the basis of paper profits from intercompany transactions?

The Examiner: I missed part of it. The band started to play out here.

A. The answer is "no".

The Examiner: Thank you.

(Testimony of E. W. Hodges.)

By Mr. Phleger:

Q. Has the Pacific Gas and Electric Company ever issued securities in anticipation of excessive revenues from subsidiary companies?

A. No.

Q. Has your company ever shown in its financial statements any inter-company profits?

A. No.

Q. Has the Pacific Gas and Electric Company ever paid [474] any fees to the North American Company or any other holding company for fiscal services, management services, construction services, or any other kind of service of a similar nature?

A. No.

Q. What are the names of the firms which have audited the books of the Pacific Gas and Electric Company?

A. We have had two different firms.

For the period 1906 to 1923, inclusive, the accounts of the company and its subsidiaries were audited by the accounting firm of Price Waterhouse & Company, and for the period 1924 to date the accounts have been audited by the accounting firm of Haskins & Sells.

Q. What has been the extent of the audits by these firms?

A. Haskins & Sells account certificate addressed to the Board of Directors, Pacific Gas and Electric Company, states: I quote: "We have examined the consolidated balance sheet of Pacific Gas and Elec-

(Testimony of E. W. Hodges.)

tric Company and its subsidiary companies as of December 31, '39, the related statement of consolidated net income and summary of consolidated surplus for the year ended that date, and the balance sheet of Pacific Gas and Electric Company as of December 31, 1939, have reviewed the systems of internal control and the accounting procedure of the companies, and have examined or tested their accounting records and other [475] supporting evidence by methods and to the extent we determined appropriate.

"In our opinion, the accompanying balance sheets and related statement of consolidated net income and summary of consolidated surplus fairly present the financial condition of the companies at December 31, '39, and the results of their operations for the year ended that date in conformity with generally accepted accounting principles followed by the companies on a basis consistent with those of the preceding year."

The Examiner: May I ask you, was a copy of the financial statements with which that certificate was accompanied, or accompanied by that certificate filed with the Securities and Exchange Commission under the Securities and Exchange Act, do you know?

The Witness: This certificate from which I have been reading is a certificate appearing in the company's annual report to stockholders and I believe approximately the same certificate is contained in

(Testimony of E. W. Hodges.)

the annual report filed with the Securities and Exchange Commission.

The Examiner: Thank you.

By Mr. Phleger:

Q. Have there been any business transactions of any kind between Applicant and North American Company or any of its subsidiaries and affiliates since June 12, 1930? [476] A. No.

Q. With the single exception of the transaction whereby Applicant acquired the stock of Great Western and San Joaquin from the North American Company in 1930, has there ever been any business transaction of any kind between the North American Company, its subsidiaries or affiliates and the Applicant? A. None.

Q. Describe the contacts, if any, which you have had with the North American Company, its officers, directors or employees since June 12, 1930.

A. The only contact that I have ever had with any of those officers was back in 1934. In September of that year Mr. Hockenbeamer and myself made a trip to New York City where we appeared as witnesses before the Board of Tax Appeals in connection with an appeal Western Power Corporation had taken against an asserted deficiency of the Commissioner of Internal Revenue involving the exchange of 1,825,000 shares of Pacific Gas and Electric Company common stock, for all of the common and preferred stock of the Great Western

(Testimony of E. W. Hodges.)

Power Company of California, San Joaquin Light and Power Corporation and Midland Counties Public Service Corporation, which was owned by the Western Power Corporation on June 12, 1930.

It was necessary to show that this exchange of stock constituted a tax free transaction under the applicable [477] provisions of the Income Tax Law and considerable testimony was introduced to show that a statutory reorganization had occurred.

A review of the Board of Tax Appeals Decision No. 72943 dated May 27, 1936, which held that the exchange of stock constituted a tax free transaction will indicate the extent of the testimony introduced.

Q. Did you appear as witnesses, that is, yourself and Mr. Hockenbeamer at the request of North American Company? A. We did.

Q. Did you appear merely as a convenience to them?

A. No. The matter was of vital importance to the Pacific Gas and Electric Company as well because if the transaction constituted a taxable transaction the Pacific Gas or its subsidiaries might have been subject to additional tax.

Q. Now, other than the contact which you have just recited have you had any contacts with officers or employees of the North American Company or its subsidiaries? A. None whatever.

Q. Have all of the outstanding bonds of the Pacific Gas and Electric Company been issued pur-

(Testimony of E. W. Hodges.)

suant to the order and authorization of the Railroad Commission of the State of California?

A. They have. [478]

Q. Have all of the shares of preferred stock of the Pacific Gas and Electric Company been issued and sold pursuant to the order and authorization of the Railroad Commission of the State of California?

A. They have.

Q. How much, or what proportion of the common stock of the Pacific Gas and Electric Company has been issued pursuant to the order and authorization of the Railroad Commission of the State of California?

A. My memory is that approximately 85 per cent of all of the common stock now outstanding has been authorized by the Railroad Commission of the State of California.

Q. That would mean, would it not, that approximately 15 per cent of the common stock of Applicant was issued and outstanding when the Public Utility Act of the State of California became effective in 1912? A. That is correct.

Q. So that it may be said that all of the presently outstanding bonds, all of the presently outstanding preferred stocks and all but 15 per cent of the presently outstanding common stock of Applicant had been issued pursuant to the order and authorization of the Railroad Commission of the State of California? A. That is correct.

Q. Will you state the approximate amount of

(Testimony of E. W. Hodges.)

the [479] public utility property now owned by Applicant, which has been either built or acquired by it pursuant to the order or authorization of the Railroad Commission since the effective date of the Public Utility Act?

A. It is approximately 80 per cent.

Q. The testimony which has already been introduced shows that the Pacific Gas and Electric Company represents a consolidation of approximately 400 separate utility company properties.

Is it a fact that the acquisition of all of the stocks of those companies and all of the physical properties of those companies, which have been acquired since the effective date of the Public Utility Act in 1912, have been acquired pursuant to the order and authorization of the Railroad Commission of the State of California? A. It is.

Mr. Phleger: I offer in evidence as Applicant's Exhibit 36 the following sheets, 7 separate documents which, for convenience, have been bradded together which respectively are headed as follows, and all of which have been prepared and are introduced at the request of counsel for the Securities and Exchange Commission: The first item "Pacific Gas and Electric Company, balance sheet, February 28, 1930".

Second sheet "Pacific Gas and Electric Company, Pacific Gas and Electric Company and subsidiaries companies, balance [480] sheets, February 28, 1930".

(Testimony of E. W. Hodges.)

Third sheet "Pacific Gas and Electric Company, balance sheet, June 30, 1930, Pacific Gas and Electric Company and subsidiary companies consolidated balance sheet, June 30, 1930 (after acquisition of capital stocks of subsidiary companies of Western Power Corporation)".

The next sheet "Pacific Gas and Electric Company and subsidiary companies, balance sheets, June 30, 1930".

The next sheet "Investments in capital stocks and bonds of subsidiary companies, June 30, 1930, Schedule 1" which is attached to the foregoing balance sheet.

The next sheet "Pacific Gas and Electric Company and subsidiary companies, balance sheets, all companies and consolidation, June 30, 1940."

The next sheet "Profit and Loss statement by companies and consolidation for the six months ended June 30, 1940."

Attached to the latter are the following separate sheets: "Balance sheet of Western Canal Company, June 30, 1940.

"Statement of profit and loss and surplus of Western Canal Company for 12 months period ended June 30, 1940."

Certificate thereto of Lawrence Scudder & Co., certified public accountants, dated February 14, 1940.

The next sheet "Vallejo Electric Light & Power Company, summary of income and surplus for the

(Testimony of E. W. Hodges.)

years ended December 31, [481] 1939 and 1938 and comparison."

Attached thereto is a sheet headed "Vallejo Electric Light & Power Company, condensed balance sheet, December 31, 1939 and 1938 and comparison."

The next sheet is headed "Pacific Gas and Electric Company, analysis of surplus years 1935, 1936, 1937, 1938 and 1939."

The certificate of Lawrence Schudder & Co., is applicable only to the balance sheet of the Vallejo Electric Light & Power Co.

The Examiner: In the absence of objection the documents as described by Mr. Phleger will be received in evidence and marked Applicant's Exhibits 36-A to M.

(The documents referred to were marked Applicant's Exhibit Nos. 36-A to 36-M, inclusive, and received in evidence.)

By Mr. Phleger:

Q. Mr. Hodges, you are familiar with the documents which have just been introduced in evidence, are you not? A. I am.

Q. They are full, true and correct statements of what they purport to be, are they?

A. They are.

Mr. Phleger: I will offer in evidence as Applicant's Exhibit 37 two sheets bradded together the first entitled [482] "Pacific Gas and Electric Company 6 per cent first preferred stock", the second sheet "5½ per cent first preferred stock."

(Testimony of E. W. Hodges.)

The Examiner: This next offer as described by counsel in absence of objection will be received in evidence and marked Applicant's Exhibit 37-A and B respectively.

(The documents referred to were marked Applicant's Exhibits Nos. 37-A and 37-B and were received in evidence.)

By Mr. Phleger:

Q. Mr. Hodges, has this exhibit been prepared by you or under your direction? A. It was.

Q. And are the facts thereon set forth true and correct? A. They are.

Q. State what the exhibit shows?

A. The first statement covering the 6 per cent first preferred stock shows the amount of stock issued by years from 1914 to 1939 inclusive, the number of shares issued and the proceeds realized therefrom, the number of shares that were issued for cash and the proceeds realized, the number of shares that were exchanged for the original preferred stock and the number of shares that were issued in exchange for stock of equal par value of the stocks of the California Telephone & Light Company, Western States Gas & Electric [483] Company, Coast Valleys Gas & Electric Company, Great Western Power Company of California, Feather River Power Company and San Joaquin Light & Power Corporation, also certain shares that were

(Testimony of E. W. Hodges.)

issued in connection with the acquisition of other property.

The statement shows that during that period of time there were 4,197,662 shares issued, and that the total proceeds obtained therefrom aggregated the sum of $97,853,150.

The figure I have just mentioned is reconciled with the total par value of the stock outstanding and the company's books or balance sheet of $104,941,550, and discount of $7,088,399.35, leaving a balance of $97,853,150.65.

The second statement covers the shares of 5-½ per cent first preferred stock which was first issued in 1929 and covers all subsequent issues to and including the year 1939. This statement shows that during that period there were 1,173,163 shares issued. The proceeds realized aggregated the sum of $29,267,122. There were 699,001 shares that were sold for cash, from which the proceeds aggregated the sum of $17,413,072.

There were 377,358 shares issued in exchange for the capital stocks of equal par value of the Great Western Power Company of California and Feather River Power Company, the aggregate par value of which was $9,433,950, and that there were 96,804 shares issued in exchange for an equal par [484] value of the stock of the San Joaquin Light & Power Corporation, the aggregate par value of which was $2,420,100.

Here again the total proceeds is reconciled with

(Testimony of E. W. Hodges.)

the par values appearing on the balance sheet as follows: A total par value issued $29,329,075 less discount of $61,952.97 and leaving proceeds realized of $29,267,121.

Q. Now, it is a fact, is it not, Mr. Hodges, that following the transaction in 1930 when the Applicant acquired stocks of the Great Western and San Joaquin and North American Company that the Great Western and the San Joaquin had outstanding in the hands of the public several millions of dollars of preferred stock?

A. That is correct.

Q. State by reference to this exhibit the manner in which the Pacific Gas and Electric Company acquired the outstanding preferred stocks of those companies.

A. Well, offers were made to the stockholders of the Great Western, Feather River Power Company and San Joaquin Light & Power Corporation, to exchange certain shares of the company's first preferred stock, and in certain instances some of its common stock for their holdings.

Q. And the result was, was it not, that Pacific Gas and Electric Company issued its own preferred stocks and some common stock also?

A. That is correct. [485]

Q. In the acquisition of the shares of Great Western and San Joaquin which had not been owned by the North American Company?

A. That is correct.

(Testimony of E. W. Hodges.)

Q. I call your attention to Applicant's Exhibit 30. That exhibit shows the total preferred and common stock of Applicant outstanding during the period 1930-1940.

Is it a fact, Mr. Hodges, that some of the additional shares of preferred and common stock issued in that period was issued in exchange for stock of the San Joaquin and Great Western Companies which had not been acquired from the North American Company? A. It is.

Q. Now, by reference to that statement, which you will note shows an increase in the number of shares of stock owned by the North American Company from 1,855,238 shares as of December 31, 1930, to 2,075,455 shares as of the succeeding December 31, how did that increase come about?

A. I believe probably the entire increase there was due to the right offering—the par offering of common stock to the common stockholders during the year 1931.

Q. That is to say, that during that year the North American Company purchased a number of shares of common stock of Applicant which it was entitled to purchase by virtue of being a common stockholder in Applicant because of an offer [486] by Applicant to all of its stockholders of rights to subscribe to its common capital stock?

A. That is correct.

Q. Now, you will note that there has been continuously since June 12, 1930, a decline in the rela-

(Testimony of E. W. Hodges.)

tive percentage of the total voting stock of applicant held by the North American Company, the decrease being from a maximum in 1930 of 19.89 per cent to the present percentage of 17.71 per cent.

Can you state what has brought about that decrease in percentage?

A. I would say it would be entirely due to the additional common preferred stock of the Pacific Gas and Electric Company that was issued in exchange for the preferred stock of the Great Western and San Joaquin Corporation held by other stockholders, stockholders other than the North American Company.

Q. Well, it is obvious, Mr. Hodges, that that is true as to principal amount, but it is also true, is it not, that a portion of the decline has come about through the actual disposition by North American Company of some of its shares of stock?

A. It indicates that they have disposed of some part of their holdings, yes.

Q. Yes. A. That is correct. [487]

The Examiner: Where is that shown on this Exhibit 30?

Mr. Phleger: That is the maximum number of shares of stock of this company owned by North American Company on December 31, 1934, being 2,077,055 shares.

The Examiner: Oh, I see. You are referring to the total column rather than the North American Company?

(Testimony of E. W. Hodges.)

Mr. Phleger: I am referring to the North American and its affiliated subsidiary interests.

The Examiner: All right.

By Mr. Phleger:

Q. So that of today, or rather as of July 31, 1940, the total holding of the North American and its subsidiaries and affiliates is 2,059,670 shares; that is correct, is it not, Mr. Hodges?

A. It is.

Q. That came about, did it not, through the disposition of some of the shares owned by subsidiary and affiliated companies rather than through by North American Company itself?

A. Yes sir.

Q. Mr. Hodges, also in explaining the relative decrease in the percentage of voting stock held by the North American Company, it is a fact, is it not, that any sales of preferred stock for cash during that period would also have an effect upon that percentage? A. That is correct. [488]

Q. And I believe it is true, is it not, that there was one sale of preferred stock for cash some $5,000,000 during that period?

A. That is correct.

Q. So that the decrease in the relative percentage of voting stock of the company has come about through the exchange of preferred stock for stock of San Joaquin and Great Western, through the sale of preferred stock for cash and through the

(Testimony of E. W. Hodges.)

disposition by some of the affiliated and subsidiary companies of North American of some of their stock? A. That is correct.

Mr. Phleger: I will offer in evidence as Applicant's Exhibit 38 a sheet headed "Pacific Gas and Electric Company, summary of bond refunding operations during period January 1, 1930, to September 30, 1940."

Mr. Gerdes: Off the record.

The Examiner: Off the record.

(Discussion outside the record.)

The Examiner: In the absence of objection this document just described will be received in evidence as Applicant's Exhibit 38.

(The document referred to above was marked Applicant's Exhibit No. 38 and was received in evidence.) [489]

By Mr. Phleger:

Q. Mr. Hodges, Exhibit 38 was prepared under your direction, was it not? A. It was.

Q. And it is true and correct? A. It is.

Q. Will you state what it shows?

A. Well, generally it shows that during the period from August 1930 to October of 1936 that the company sold three hundred million dollars par value of its first refunding mortgage bonds from which it realized $397,312,500, and that from the proceeds from the sale of these bonds together with certain treasury funds it redeemed $285,962,600 par

(Testimony of E. W. Hodges.)

value, the cost of redeeming aggregating the sum of $298,550,772.

The Examiner: Does that include interest?

The Witness: No, that does not include interest; that is just the redemption price.

By Mr. Phleger:

Q. Have all of the bonds issued by the company during that period been issued under a single bond mortgage? A. They have.

Q. And the issues which have been redeemed have been not only issues of Applicant but also the issues of subsidiary corporations which bonds were outstanding when the properties [490] of those corporations were acquired by the Pacific Gas and Electric Company? A. That is correct.

Q. So that during that entire period the company has been simplifying its bond structure by retiring the bonds of subsidiary companies, or bonds outstanding on acquired properties and issuing, to obtain the funds required therefor, bonds under its own mortgage? A. That is correct.

Mr. Phleger: I will offer as Applicant's Exhibit 39 a statement headed "Pacific Gas and Electric Company and subsidiaries, statement showing security issues held by public as of dates shown below."

The Examiner: This schedule will be received in evidence and marked Applicant's Exhibit 39.

(Testimony of E. W. Hodges.)

(The statement referred to was marked Applicant's Exhibit No. 39 and was received in evidence.)

By Mr. Phleger:

Q. Mr. Hodges, did you cause Exhibit 39 to be prepared and is it true and correct? A. It is.

Q. Will you state generally what it shows?

A. The statement shows security issues held by the public and amounts outstanding as of December 31, 1930, and as of June 30, 1940. [491]

At the bottom of the statement it is indicated that as of December 31, 1930 there were 61 bond issues outstanding.

The Examiner: Security issues?

The Witness: Security issues, yes, right, and that as of June 30, 1940, that had been reduced to a total of 10.

By Mr. Phleger:

Q. That is to say, that during that 10 year period the company has simplified its corporate structure so that as of today it has but one bond mortgage outstanding, but two issues of preferred stock and but one issue of common stock, is that right? A. There are——

Q. (interposing) I am talking about the P. G. & E. itself.

A. Well, but the San Joaquin Light & Power Corporation bond issue has been assumed by Pacific Gas & Electric Company.

(Testimony of E. W. Hodges.)

Q. Well, I will ask you that in a moment. The company itself has but one bond mortgage outstanding, two issues of preferred stock and one of common stock, is that correct?

A. That is correct.

Q. And how many bond issues has it outstanding of other companies which it has assumed?

A. One.

Q. So that the company's structure is now that it has but one bond mortgage itself, has assumed one mortgage of an [492] acquired company, has two preferred stock issues, and one common stock issue?

A. It has assumed more bond issues than one company, than the one that you speak of, but there is only the one issue now outstanding.

Q. Now outstanding, yes. A. Correct.

Q. I have referred, Mr. Hodges, to two issues of preferred stock. The fact is that there has been one issue having two different dividend rates?

A. That is correct.

Q. In all other respects except dividend rate the issue is identical as to priority, position and otherwise? A. Correct.

The Examiner: That would appear from the articles of incorporation, would it not?

Mr. Phleger: Yes. I wanted to correct my terminology of two preferred issues, which was not quite accurate.

The Examiner: Unless, as you say, the articles

(Testimony of E. W. Hodges.)

show that there might be an assumption there were two different issues, because they have—oh, no, they are titled the same. I thought one was prior preferred and the other just preferred.

Mr. Phleger: No, the company has but one type which is first preferred. [493]

The Examiner: First preferred, 5½ and 6.

Mr. Bosley: This is off the record.

The Examiner: Off the record.

(Discussion outside the record.)

The Examiner: On the record again.

Mr. Phleger: I offer as Applicant's Exhibit 39——

The Examiner: 40 will be the next number, I believe, Mr. Phleger.

Mr. Phleger: Right.

The Examiner: 39 is this schedule you just discussed.

Mr. Phleger: That is right, 40. A statement headed "Pacific Gas and Electric Company and subsidiary companies, statement showing outstanding bonds, preferred stock, common stock and surplus, as of the dates shown below."

The Examiner: This compilation consisting of three pages will be received in evidence and marked, in the absence of objection, Applicant's Exhibit 40.

(The document referred to above was marked Applicant's Exhibit No. 40 and was received in evidence.)

(Testimony of E. W. Hodges.)

By Mr. Phleger:

Q. Mr. Hodges, was Exhibit 40 prepared under your direction? A. It was.

Q. And the facts set forth there are true and correct, [494] are they? A. They are.

Q. Will you explain what the exhibit shows.

A. The statement shows the amounts of outstanding bonds, preferred stock, common stock and surplus as of December 31, 1919; December 31, 1924; December 31, 1929; December 31, 1934, and December 31, 1939, and shows the respective amounts outstanding and the percentage of each to the total amount as of the end of each of those years.

For the year December 31, 1919, for instance, the surplus account aggregated the sum of $5,868,331 and represented 3.74 per cent of the total amount.

The common stock amounted to the sum of $34,004,058 and was 21.67 per cent of the total.

The preferred stock aggregated the sum of $30,049,580 and was 19.15 per cent of the total.

The bonds aggregated the sum of $87,002,406, and represented 55.44 per cent of the total.

As of December 31, 1939 the corresponding amounts outstanding were as follows: Surplus $51,465,607 or 8.17 per cent of the total; common stock $156,570,125 or 24.87 per cent of the total; preferred stock $134,270,625 or 21.32 per cent of the total, and bonds $287,345,000 or 45.64 per cent of the total.

(Testimony of E. W. Hodges.)

Q. The exhibit shows, does it not, Mr. Hodges, a very [495] substantial improvement in the capital structure of the company over the 20 year period? A. It does.

Q. It shows that the percentage of borrowed money to the total outstanding securities and surplus has decreased from 55.44 per cent in 1919 to 45.64 per cent in 1939, is that right?

A. That is correct.

Mr. Phleger: I will offer as Applicant's Exhibit 41 a statement headed "Pacific Gas and Electric Company and subsidiary companies, earnings for and dividends paid on Pacific Gas and Electric Company preferred and common stocks 1920 to 1939 inclusive."

The Examiner: The statement will be received in evidence and marked Applicant's Exhibit 41.

(The statement referred to above was marked Applicant's Exhibit No. 41 and was received in evidence.)

By Mr. Phleger:

Q. Mr. Hodges, did you cause Exhibit 41 to be prepared? A. I did.

Q. Are all of the facts therein set forth true and correct? A. They are. [496]

Q. Will you state briefly what it shows.

A. The statement shows for each year from 1920 to 1939 inclusive the earnings available for the preferred and common stock of Pacific Gas and Elec-

(Testimony of E. W. Hodges.)

tric Company, the dividends paid on the preferred stock, the balance available for the common stock, and the amount per share and the amount of dividends paid on the common stock for each year and the amount per share.

Mr. Phleger: I will offer now as Exhibit 42 a statement headed "Table showing all securities issued by Pacific Gas and Electric Company since its incorporation which was sold to an underwriter or underwriting syndicate and the respective participation of each such underwriter."

This exhibit was prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: Off the record.

(Discussion outside the record.)

The Examiner: On the record.

The schedule just described by Mr. Phleger consisting of three sheets of paper will be received in evidence, in the absence of objection, and marked Applicant's Exhibit 42.

(The document referred to was marked Applicant's Exhibit No. 42 and was received in evidence.) [497]

By Mr. Phleger:

Q. Was this prepared under your direction, Mr. Hodges, and are the facts therein set forth true and correct?

A. It was, and they are.

(Testimony of E. W. Hodges.)

Q. Will you explain what the exhibit shows?

A. The exhibit shows all securities issued by Pacific Gas and Electric Company since its incoration which were sold to an underwriter or underwriting syndicate, and the respective participation of each such underwriter.

The first securities sold in which there is an underwriting participation occurred during the years 1908 to 1911 representing the California Gas & Electric Corporation unifying refunding mortgage 5 per cent bonds, par value 15,074,000, the underwriter in that instance being N. W. Halsey & Company and then the statement goes on to list the other securities that had been sold in all subsequent years down to and including the present time.

The Examiner: Well, is that as far as you are going with the explanation of this exhibit?

Mr. Phleger: I think so.

The Examiner: May I ask this question, then? On the first page of this exhibit I notice at the bottom a schedule of underwriters with a number of firms named and their participation.

Does that refer only to this last issue of 45,000,000 [498] in April 1935?

The Witness: That is correct, yes.

The Examiner: I see. All right.

By Mr. Phleger:

Q. Mr. Hodges, has the company a pension plan?

(Testimony of E. W. Hodges.)

A. It has.

Q. Will you describe very briefly its nature?

A. The present retirement plan, or pension plan of the company, was adopted and became effective as of January 1, 1937. All employees with one year or more of service were eligible to join this plan.

It is a contributory plan in that the employees pay part of the cost and the company pays the balance. The relative ratio is that the company pays approximately twice as much as the employees do.

The plan provides for benefits to employees for both past and future service; that is, service prior to January 1, '37, and service subsequent to December 31, '36.

For service prior to January 1, '37, the company pays the entire cost; for service subsequent to December 31, '36, both the company and the employee contribute to the cost of the plan. The contribution of the employee is 2 per cent of his earnings up to $3,000 per annum and 4 per cent on any earning in excess of that amount.

The benefits to the employee for services rendered [499] subsequent to December 31, '36 are 1 per cent of all earnings on which he has made contributions during that period.

I might, for the purpose of example, show what the benefits to an employee is under the plan.

As just an example given in the retirement plan, a man with 15 years of past service, who joins

(Testimony of E. W. Hodges.)

the plan January 1, 1937 at age 50 and works until age 65 will retire with 15 years of past service and 15 years of future service. If, during this period he has continuously received a salary of $150 monthly his retirement income will amount to the sum of $78.75 per month commencing at age 65.

That amount, I may state, includes his social security benefits under the Social Security Act.

The Examiner: Would that be for life or for 15 years?

The Witness: That would be for life. He would receive the $78.75 income, monthly income from 65 years, from the time he becomes 65 until his death.

By Mr. Phleger:

Q. Mr. Hodges, referring to Exhibit 42, what is the first security issue for which the company filed a registration statement under the Sesurities Act?

A. The first refunding mortgage funds, Series G 4's that were issued and sold in April of 1935, $45,000,000.

Q. Was that one of the first registration statements filed by any public utility under the Securities Act? [500]

A. After the amendment of that Act it was. It was one, I believe, either the first, or at least, the second.

The Examiner: You said the Securities Act of 1933. That is what you meant, isn't it?

(Testimony of E. W. Hodges.)

Mr. Phleger: Yes.

The Examiner: This was in 1935.

Mr. Phleger: I think that is all.

The Examiner: Can we have a short recess before you start your cross examination, Miss Calkin?

Miss Calkin: All right.

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

[501]

The Examiner: Can you think of any more questions, Mr. Phleger?

Mr. Phleger: I have finished.

Cross Examination

By Miss Calkin:

Q. Mr. Hodges, could you describe the distinction between your duties and the duties of Mr. Foote, as Treasurer of the company?

A. Mr. Foote has the control and custody of any securities owned by the company and of the company's cash.

My Jurisdiction is limited to the approval of the expenditures made by the company.

Q. Do you work on the preparation of registration statements for the issuance of securities by the Applicant? A. I do.

Q. Is that done primarily by your department?

A. It is.

(Testimony of E. W. Hodges.)

Q. In connection with the preparation of registration statements for securities issued by your company since 1935, have you worked with representatives of the North American Company in the preparation of those statements? A. No.

Q. With what members of the personnel of the North American Company are you acquainted?

A. At the time of our visit there in 1934 I met Mr. [502] Fogarty, and Mr. Black at that time, and Mr. Preger, their comptroller.

Q. Was that your first acquaintance with Mr. Black?

A. No. I had met Mr. Black at the time the company acquired the stock of the Great Western and San Joaquin in 1930.

Q. What contacts did you have with Mr. Black from the time you first met him until the time he became president of the Applicant?

A. Outside of meeting him in New York in 1934 that was the only contact that I had ever had.

Q. Had you had any further contacts with Mr. Fogarty, or Mr. Preger, other than that meeting in 1934?

A. I believe that I met Mr. Fogarty here in San Francisco once, or possibly twice, on one of his visits here.

Q. On those occasions what was the extent of your discussion of the affairs of the Applicant with Mr. Fogarty? A. None whatsover.

(Testimony of E. W. Hodges.)

Q. Who has charge of the accounting department of the North American Company, if you know?

A. I do not know. I suppose it comes under Mr. Preger.

Q. Have you ever met a Mr. Sealey, of the North American Company?

A. No, I have not.

Q. Have you ever had any correspondence with Mr. [503] Preger concerning matters pertaining to either the North American Company or the Applicant?

A. Each year I receive a letter from Mr. Preger in which he asks us to certify as to the book value per share of the common stock and we give him that information.

Q. Is that the extent of your correspondence with Mr. Preger?

A. That is the extent of our correnpondence; yes.

Q. Have you ever had any telephone communications with any representatives of the North American Company. A. Never.

Q. Have you consulted any representatives of the North American Company with reference to tax matters of the Applicant?

A. Never, but the one that I mentioned in 1934. That was really not our tax matter, although it was indirectly involved.

(Testimony of E. W. Hodges.)

Q. But that is the only occasion that you had any contacts with them on the tax problems?

A. The only occasion.

Q. Do you have tax experts in your own employ?

A. Pardon?

Q. Does the Applicant have tax experts in its employ?

A. No. I handle the tax matters primarily myself.

Q. Do you sometimes employ outside tax experts. [504] A. We have; yes.

Q. Have those been employed on the recommendation of the North American Company?

A. No.

Q. Have you received the assistance of any representatives of the North American Company in making out reports to regulatory bodies?

A. Never.

Q. I believe you testified that acquired properties had been set up on the Applicant's books on the basis of historical cost less accrued depreciation, is that correct?

A. I believe my testimony was to the effect that the over-all plant account, as it appears on the books of the P. G. & E., represents the cost to the company of the properties acquired.

Q. If the cost of acquisition exceeds the historical cost less depreciation to what account would that difference be charged?

(Testimony of E. W. Hodges.)

A. Under the classification of accounts for electrical corporations, effective January 1, 1938, if the cost exceeds the so-called original cost of the property, the difference is supposed to go in the Acquisition Adjustment Account, which is a part of the Plant Account.

Q. What is your Account No. 102-½?

A. It corresponds to the Acquisition Adjustment [505] Account in the present classification of accounts.

Q. Has it been sometimes designated as the cost of acquisition of properties in excess of historical cost of properties acquired?

A. It has and is so designated.

Q. If the cost of acquisition is less than the original cost less depreciation what account would be credited with the difference?

A. It should go to the same account.

Q. Is this method prescribed by the Railroad Commission in the handling of cost of acquired properties?

A. It is; it has so been prescribed since January 1, 1938.

I might state in that respect that the classification that became effective January 1, 1938 provides for a re-classification of the company's entire plant accounts as of that date on a basis of original cost; and if that original cost was more or less than the cost to the company of the acquired properties

(Testimony of E. W. Hodges.)

that the difference shall be debited or credited to this Acquisition Adjustment Account.

Q. What reports, if any, do you, as Comptroller of the Applicant, send to the North American Company? A. None.

Q. Do you have any knowledge as to what reports are sent by other departments of the Applicant? [506] A. No.

Q. Have you ever conferred with any representatives of the North American Company regarding the maintenance and depreciation policy of the Applicant? A. Never.

Q. To your knowledge have any representatives of the Applicant conferred with any representatives of the North American Company in regard to the maintenance and depreciation policy?

A. Not to my knowledge.

Q. Will you refer to Applicant's Exhibits Nos. 12 and 13? A. Yes.

Q. You are familiar, I assume, with the investments of the Applicant? A. I am.

Q. Now, does Applicant's Exhibit No. 13 correctly list all of the investments or, rather, all of the securities owned by the Applicant in any public utility company or in any registered holding company?

A. It states to include any securities issued by any public utility or holding company.

(Testimony of E. W. Hodges.)

The Examiner: That includes all of such securities?

The Witness: It does. [507]

By Miss Calkin:

Q. You know of no securities owned by the Applicant and issued by any registered holding company, or any subsidiary thereof, other than those set forth in Applicant's Exhibit No. 13?

A. No, I do not.

Q. And does Applicant's Exhibit No. 12 show all of the securities—scratch that.

In the preparation of Applicant's Exhibit No. 12 what companies were considered as subsidiaries of the Applicant, if you know?

A. The San Joaquin Light & Power Corporation, Valley Electrical Supply Company, Arlington Properties Company, Ltd. and Western Canal Company.

Q. Were companies in which the Applicant had only an excess of a 50 per cent ownership included?

A. They are in those that I have named; yes.

Q. What about Applicant's investment in companies in which it owns less than 50 per cent, are there any substantial investments other than those shown in Applicant's Exhibit No. 12?

A. None.

Q. Does Applicant's Exhibit No. 12 list its holdings of the securities of all companies in which it owns in excess of 10 per cent interest? [508]

A. Yes, it does.

(Testimony of E. W. Hodges.)

Q. I believe you testified that all of the outstanding bonds of the Applicant have been issued under one indenture, presently outstanding bonds?

A. Well, with the exception of this assumed issue of the San Joaquin Light & Power Corporation.

Q. The bonds originally issued by the Applicant that are now outstanding were all issued under one indenture? A. Correct.

Q. What is the provision in that indenture relating to the issuance of additional bonds?

A. Well, they may be issued for additions and betterments, and property acquisitions, and so on, if approved by the trustee of the montgage.

Q. Do you know what percentage of bonds can be issued against property additions and betterments?

A. 75 percent, 75 percent par value.

Q. Does the indenture which secures the outstanding bonds contain any regulation on dividend payments by the Applicant?

A. Not to my knowledge.

Mr. Bosley: I may answer that there is one provision, which is utterly unimportant. In the event—I can't remember the exact language of it—but it was to the effect that dividends should not be paid out of some prior earnings. I [509] can't remember the exact language, but there is a short paragraph that has been shown in all of the registration statements. It had to do with the earnings prior, I think,

(Testimony of E. W. Hodges.)

to the date of the mortgage, but I am not quite certain.

Miss Calkin: The date of the mortgage is?

Mr. Bosley: December 1, 1920.

I cannot remember the exact language of that, but there is a short paragraph that had to do with some declaring of dividends out of earnings prior to some date specified there.

By Miss Calkin:

Q. What are the provisions, if any, in the indenture relating to maintenance and depreciation?

A. I don't recall the specific provisions at the moment; other than I believe it does require that such expenditures shall be in accordance with those approved by the regulatory commissions.

Mr. Bosley: There is a provision designed to accomplish the same object as a depreciation reserve. It is called a general reserve fund. The company is required to submit a report annually to the trustee showing its expenditures for maintenance, for replacements and for retirements of bonds of certain kinds. It is required to set up a fund equal to a specified percentage of, I think, its gross income.

The Witness: Outstanding bonds.

Mr. Phleger: May I make this suggestion: We are [510] speculating about a fact and really testing memories about something that is easy to show. If

(Testimony of E. W. Hodges.)

you are interested we will be glad to endeavor to introduce in evidence a copy of the indenture.

The Examiner: A copy of the indenture is already in the files of the Commisson in connection with the registration statement.

Mr. Phleger: That is right.

Mr. Bosley: Its general reserve fund may be used for additions and betterments, if it is not required for replacements, to which a certain amount must be credited each year. The amount there is this specified percentage less the amount of the actual expenditures for maintenance and replacements.

Miss Calkin: Is it agreeable with counsel for the Applicant that the indenture which has been filed in connection with the registration statement of Applicant be incorporated by reference in this record?

Mr. Phleger: May I have that question read?

(The question referred to was read by the reporter as above recorded.)

Mr. Phleger: That is agreeable, but may I make this suggestion: —

The Examiner: I suppose that includes any supplement or amendment to that indenture, if any?

Miss Calkin: Yes. [511]

Mr. Phleger: Yes. In lieu of that may it be stipulated that either party may incorporate in its brief, or otherwise, references to the filed mortgages

(Testimony of E. W. Hodges.)

or supplements with the Commission and the portion so recited shall be deemed to be part of the record? That will diminish the record.

Miss Calkin: That is agreeable.

The Examiner: I think the Commission can take judicial notice of its own file and, in order to diminish the record, I think that is a good idea.

Miss Calkin has indicated her concurrence and that will appear in the record as a stipulation to that extent.

By Miss Calkin:

Q. Do you have available the ratio of the funded debt to Applicant's depreciated property account?

A. We have a balance sheet here of June 30, 1940, do we not?

Mr. Gerdes: Yes.

A. (continuing) The total funded debt outstanding in the hands of the public, as of June 30, 1940, aggregated the sum of $286,705,000.

The total plant account, as of that same date, was the sum of $731,346,410.

You spoke of the depreciated plant account, and as of that same date the depreciation reserve was $121,868,438.

So the ratio you speak of would be the amount of the [512] plant account less the amount of the depreciation reserve, and that difference divided into the bonds outstanding in the hands of the public of $286,705,000 of that date.

(Testimony of E. W. Hodges.)

By Miss Calkin:

Q. What percentage would that be?

A. (Making calculation).

Mr. Phleger: 46 percent.

A. 46 percent—47 percent.

Miss Calkin: I think that is all.

Redirect Examination

By Mr. Phleger:

Q. May I suggest, Mr. Hodges, there is no logical relationship between the bonded indebtedness of the company and the difference between its plant account and its depreciation reserve, is there?

A. I can think of none.

Mr. Phleger: That is all.

Miss Calkin: Off the record.

The Examiner: Off the record.

(Remarks outside the record.)

The Examiner: On the record.

Mr. Phleger: That is all.

The Examiner: If there are no further questions the witness is excused.

(Witness excused.) [513]

Mr. Phleger: I will call Mr. Miller.

Whereupon—

C. O. G. MILLER

was produced as a witness by and on behalf of the

(Testimony of C. O. G. Miller.)

Applicant and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Where do you reside, Mr. Miller?

A. San Francisco.

Q. Where were you born?

A. San Francisco.

Q. Have you resided in California ever since?

A. Yes. It has been my legal residence.

Q. When did your family first come to California?

A. My grandfather came in 1849; my father in 1851.

Q. And has your family—by that I mean your parents and so forth—been residents in California since that time? A. Yes, sir.

Q. What position do you hold with the Pacific Gas and Electric Company?

A. I am a director and member of the Executive Committee.

Q. What other corporations are you connected with?

A. Pacific Lighting Corporation, American Trust Com [514] pany, Fireman's Fund Insurance Company, Fireman's Fund Indemnity Company, Occidental Insurance Company—

The Examiner: Life?

The Witness: Occidental Insurance Company—

(Testimony of C. O. G. Miller.)

without the "Life". Also the Soundview Pulp Company.

I think that is all of any size.

By Mr. Phleger:

Q. Are you a director of the Railway Equipment and Realty Company? A. Yes.

Q. Are you a director of the Southern California Gas Company? A. Yes.

Q. And of the Southern Counties Gas Company?

A. I think I am not a director of the Southern Counties Gas Company now.

Q. With the exception of the American Trust Company and the Pacific Lighting Company, are you an officer of any of those companies, other than a director?

A. I am Chairman of the Executive Committee of the American Trust Company, and a member of the Finance Committee of all of the Fire Insurance Companies.

Q. And you are Chairman of the Board of the Pacific Lighting Company? A. Yes.

Q. Are you a member of the Trust Committee of the [515] American Trust Company?

A. Yes.

Q. What are the duties of that Committee?

A. Every trust is reviewed ever so often—I am not quite sure what the time is—and the investments are looked into and discussed, and the sales of securities held in the trust and purchases are all approved by the Trust Committee.

(Testimony of C. O. G. Miller.)

Q. And as a member of that Committee do the holdings by American Trust Company, as trustee, and otherwise in the Pacific Gas and Electric Company, come before you for review?

A. They do.

Q. Are you an officer of Stanford University?

A. I am a trustee. I am Chairman of the Finance Committee, and Chairman of the Investment Committee.

Q. All of these companies which you have mentioned as being associated with are California companies, are they not? That is to say, their principal business is located in California? A. Yes.

Q. Are you an officer or a director of any corporation whose principal business is outside the State of California, other than the Soundview Pulp Company?

A. No, not that I know of.

Q. And the Soundview Pulp Company, while its proper- [516] ties are outside the State, has its principal office in San Francisco, does it not?

A. Yes; and is owned here.

Q. When did you first become connected with a public utility? A. December 1, 1883.

Q. What was that company?

A. United Gas Improvement Company of Philadelphia.

Q. Will you state where the properties of that company were located?

(Testimony of C. O. G. Miller.)

A. Well, the ones with which I was immediately interested were in San Francisco. They did own a large number of gas companies and electric companies, and still do, throughout the United States. I think it is the oldest holding company in the country, the United Gas Improvement Company.

Q. What position did you occupy with the United Gas Improvement Company?

A. I was cashier in the San Francisco office.

Q. What became of the United Gas Improvement Company properties in San Francisco?

A. They, within about a year sold them to the Pacific Gas Improvement Company, a local corporation, which was formed to purchase them.

Q. Who formed the Pacific Gas Improvement Company? A. My father. [517]

Q. Did you become an officer of that company?

A. Yes. In 1886 I became the Treasurer. I was later Secretary and Treasurer, and on my father's death in 1900 I became President.

Q. Did the Pacific Gas Improvement Company consolidate with other utility companies in San Francisco?

A. Yes. In 1903 they consolidated with the San Francisco Gas & Electric Company and I became a director of that company.

Q. Did you become a stockholder also in that company? A. Yes.

Q. And were you active in its affairs?

(Testimony of C. O. G. Miller.)

A. Yes. I was a member of the Executive Committee.

Q. When did you first know of the Pacific Gas and Electric Company?

A. I am not quite sure because I am not quite sure when it was formed.

Mr. Bosley: It was organized October 5, 1905.

The Witness: Well, I knew of it within a few days of that time. I may have known of it before hand. I am not sure.

By Mr. Phleger:

Q. State what transactions you had directly or indirectly with that company soon after its formation?

A. The company was formed to buy the properties of the San Francisco Gas & Electric Company and towards the end [518] of 1905 an agreement was reached for the sale of the property. I had been—

Mr. Bosley (interposing): A sale of the property or sale of the stock?

The Witness: It was the sale of the stock. In effect, it was a sale of the property. They took the property. There was stock, of course.

I thought I had been a very long while in the gas and electric business then, only 35 years ago, and having been since I was a boy in the gas and electric business in San Francisco, I thought I must have some interest in it. There was no common stock of the Pacific Gas and Electric Company

(Testimony of C. O. G. Miller.)

available. I bought 100 shares of the preferred stock of the California Gas & Electric Corporation, which was a subsidiary, so I should not lose my continuity of interest in the company.

That was afterwards changed to the Pacific Gas and Electric preferred.

By Mr. Phleger:

Q. And you have held that stock ever since the formation of the company?

A. No. That stock I sold many years ago. It was preferred stock.

Q. With respect to your holdings in the San Francisco Gas & Electric Company, what became of them?

A. We received for the stock $65 a share in Pacific [519] Gas and Electric Company collateral 5 percent bonds and $25 a share in cash.

Q. Now, we will go to another subject. When was the Pacific Lighting Company formed, of which you are now the Chairman of the Board?

A. August 24, 1886.

Q. What business did it undertake?

A. Operating small gas and electric companies throughout the State.

Q. Where were its plants located in the early days?

A. Santa Rosa, Eureka, San Bernardino, Colton, Riverside, and afterwards in Ventura; and, in 1889, Los Angeles.

(Testimony of C. O. G. Miller.)

Q. When did the Pacific Lighting Company first purchase stock in the Pacific Gas and Electric Company?

A. I am not sure of the exact time. I think it was in 1910.

Q. State how that stock was acquired.

A. I called on Mr. Frank Drum, the president of the company, whom I had known for many years, and told him—I knew the company had treasury stock and I knew that they wanted money—and I told him I would like to have my company interested in the Pacific Gas and Electric Company; that if it was agreeable to him we were prepared to buy a large block of stock.

He said he would think it over. Frank was never in a hurry. In about ten days he said they were ready to do [520] business, and we agreed upon a price and bought the stock.

Q. That was the initial purchase by the Pacific Lighting Company in 1910 of 5,000 shares?

A. Yes; of the old stock.

Q. Has the Pacific Lighting Company since that date purchased additional shares from time to time?

A. Yes.

Q. When did it become the largest individual stockholder in the company?

A. I am not sure, but I think in 1912 or 1913.

Q. And how long did it continue to be the largest individual stockholder?

A. It was the largest stockholder until the

(Testimony of C. O. G. Miller.)

Byllesby interest sold their Western States—I think it was but I can't remember the exact name —Western Gas & Electric, or Western States Gas & Electric, to the Pacific Gas, and took in payment 275,000 shares of stock. I think it was 275,000 shares.

Mr. Bosley: 260,000.

By Mr. Phleger:

Q. That was in 1927?

A. Yes; about that time. Was it as late as that? I think at that time we had about 100,000 shares, but I am not sure.

Q. Is the company now the third largest, your company, [521] the third largest stockholder in Pacific Gas and Electric Company?

A. I think so.

Q. When did you first become a director in the Pacific Gas and Electric Company?

A. I am not sure of the time. The time we bought the large interest Mr. Drum stated he would like very much not to ask anyone to resign and asked me if I cared whether I was elected a director immediately, and I told him I would wait until there was a vacancy. There was a vacancy within a year or two and I became a director then.

Q. Would you say that you became a director about 1912? A. Not later than that.

Q. When did you become a member of the Executive Committee?

(Testimony of C. O. G. Miller.)

A. I am not quite sure, but I think it was in 1913.

Q. Who constituted the Executive Committee of the company in 1913?

A. The first Committee was Frank B. Anderson, then president of the Bank of California, and myself. My impression is that Mr. Drum was not a member, but I am not sure.

Mr. Bosley: He was president at that time.

The Witness: I don't think he was a member. [522]

By Mr. Phleger:

Q. Mr. F. B. Anderson continued as a member of the Executive Committee until his death many years later, did he not?

A. Yes, sir; until 1935 when he died.

Mr. Bosley: Except for occasional interruptions when he was absent and Mr. McIntosh took his place.

The Witness: Once or twice we took a number of long trips with the Andersons, and once or twice he would resign and Mr. McIntosh, then chairman of the Bank of California, took his place.

By Mr. Phleger:

Q. I show you, Mr. Miller, Applicant's Exhibit 32, and refreshing your memory from it, will you state the number of shares of company stock which you own yourself?

A. I own 100 shares of the First Preferred and 7,500 of the common.

(Testimony of C. O. G. Miller.)

Q. Also refreshing your recollection, will you state the number of shares of stock which are owned by your family?

A. I made a trust with the Bank of California some years ago and put in 3,000 shares of Pacific Gas and Electric, common, in it.

One of my daughters has 1,600 shares of the common.

The other daughter has 420 common and 290 preferred.

My son has 1,200 shares of the common. [523]

My four grandsons have together 670 shares.

Q. How many shares has the Pacific Lighting Corporation? A. 131,900.

Q. Will you state the number of shares which the American Trust Company has in various capacities as agent, trustee and otherwise?

A. 24,281 shares of preferred stock, and 25,162 shares of common stock.

Q. How many shares of stock does the Firemen's Fund Insurance Company and associated companies hold?

A. 12,800 shares of the preferred, and 4,652 shares of the common.

Q. Do you know whether or not Stanford University owns and holds a substantial number of shares of the company?

A. Yes. I cannot remember how much it is. I

(Testimony of C. O. G. Miller.)

think they have $500,000 in bonds, or more, Stanford University.

Q. In addition to the stock? A. Yes.

Q. Who were the individuals who were prominent in the affairs of the Pacific Gas and Electric Company in the years immediately after its incorporation?

A. Frank Drum was most active. Pardon me—from the time of its incorporation?

Q. Yes. In 1905. [524]

A. That is a different story. Eugene de Sabla and John Martin were the two most active men.

Q. And following their period of chief activity who were the most active figures?

A. Frank Drum. Mr. John A. Britton was very active, but Frank Drum, after the first difficulties of 1907, 1908 and 1909, predominated.

Q. Did the company have difficulties early in its career? A. Many.

Q. Were they caused in part by the fire in San Francisco in 1906?

A. That helped. I think the principal reason was they put out more money than they took in.

The Examiner: That is the first time I ever heard a fire referred to as helping anybody.

The Witness: It increased our difficulties.

By Mr. Phleger:

Q. Have you been a regular attendant at the meetings of the Executive Committee of the company?

(Testimony of C. O. G. Miller.)

A. Yes; always when I have been in the city.

Q. Is the same thing true with respect to directors' meetings? A. Yes.

Q. Have you ever hesitated to freely and fully express [525] your views at the meetings of either the Executive Committee or the Board of Directors?

A. No; only when restrained by the rules of good behavior.

Q. Were you acquainted with Mr. Frank Dame?

A. My impression is I never met him. I knew well who he was.

Q. Did you ever have any communication with him that you can recall? A. No.

Q. Did you know Mr. Edwin Gruhl?

A. No.

Q. Did you ever have any communication with him? A. None that I know of.

Was Mr. Gruhl a director?

Mr. Bosley: Yes.

The Witness: I may possibly, I may have met him at the directors' meeting, but I have no recollection of it.

Mr. Bosley: According to the evidence he never attended any directors' meetings.

The Witness: Then I didn't meet him.

By Mr. Phleger:

Q. Are you acquainted with F. W. Doolittle?

A. I think I have never met him.

(Testimony of C. O. G. Miller.)

Q. Have you ever had any communication with him? [526] A. None that I know of.

Q. Do you know Mr. Herbert C. Freeman?

A. I think I have never met him unless I met him—one or two of those gentlemen have been out here about every six years and a half and I may have met him, but I am not sure.

Q. If it is a fact that Mr. Freeman has ever been in the State of California would you say that you had never met him? A. Yes.

Q. Have you ever communicated with him?

A. No.

Q. Do you know Mr. James F. Fogarty?

A. Yes.

Q. How frequently have you met him?

A. It would be hard to give the exact number of times. I have met Mr. Fogarty almost probably once every time I have been in New York. But in addition to that Mr. Fogarty happens to be a member of the Bohemian Club and he comes out to the Bohemian Grove activity every year, and I always see him up there quite often. But I have never discussed gas and electric matters with him at the Grove. It is an intellectual performance up there.

(Laughter).

The Examiner: That isn't what I heard about it.

(Laughter). [527]

By Mr. Phleger:

Q. The motto of the Grove is "Weaving spiders come not near?" A. That is right.

(Testimony of C. O. G. Miller.)

Q. To what extent, if any, have you discussed the affairs of the Pacific Gas and Electric Company with Mr. Fogarty elsewhere than at the Grove?

A. I did it once by telephone, had a conversation with him from San Francisco. I am not sure that I discussed it with him when I have been in New York. But I have usually gone to luncheon with George Leib, or some member of the firm of Leib & Co., and very often Mr. Fogarty has been there. That was for one, two or three years.

Q. Have your talks with him been casual conversation? A. Yes, sir.

Q. Have you discussed P. G. & E. affairs with him? A. I think not.

Q. You have no recollection of having discussed such affairs with him? A. No.

Q. Were you acquainted with Mr. Guy Earl during his lifetime? A. Yes.

Q. He was for a time prior to his death a director and member of the Executive Committee of the Applicant, was [528] he not? A. yes.

Q. And he attended meetings regularly?

A. Yes.

Q. Was he particularly active in the affairs of the company?

A. He took a great deal of interest in the Executive Committee meetings. I don't know of any activity outside of that.

Q. Was he more active than other, any other member of the Executive Committee?

(Testimony of C. O. G. Miller.)

A. I think not.

Q. Did he ever ask you to vote in any particular way, or to take any particular action as a director or a member of the Executive Committee?

A. No.

Q. Did he ever at any meeting that you attended express the attitude of the North American Company with respect to any pending matter?

A. I do not recollect it. I think not.

Q. If he had you would recall it?

A. I think not.

Q. If he had you would recall it?

A. I think I would remember it. I knew him very well. He was in the senior class of the Oakland High School when I [529] entered the junior class, and he was a junior at the University of California when I was a freshman. I knew him very well from the time I was a boy.

Q. But so far as you recall, and you would recall, you believe, he never mentioned the North American Company, or its attitude, at any meeting at which you attended?

A. I have no recollection of it.

Q. Do you own any stock in the North American Company? A. No.

Q. Does any member of your family, to your knowledge, own any stock in it? A. No.

Q. To your knowledge do any of these other companies that you are associated with own any stock in the North American Company?

(Testimony of C. O. G. Miller.)

A. No.

Q. Do you recall the purchase by Pacific Gas and Electric Company in 1930 of stocks of the Great Western Power Company of California and of the San Joaquin Light & Power Company from the North American Company? A. Yes.

Q. Was that purchase the subject of discussion for a considerable period before the transaction was consummated?

A. Yes; for many months.

Q. Were you familiar with the properties of the Great [530] Western Power Company?

A. Only in a general way. I never visited them.

Q. Was it an active competitor of the Pacific Gas and Electric Company? A. Yes.

Q. Had it been an active competitor for many years? A. Yes.

Q. Do you recall whether or not in years prior to 1930 there had been suggestions that the Pacific Gas and Electric Company should acquire the properties of the Great Western Company?

A. Yes; many times.

Q. State generally what those proposals and discussions were.

A. It would be hard for me to give the details because I never took part in any of the discussions with the Great Western. I recollect very well. I think as early as 1913, Mr. Drum asking me what I thought of the consolidation or absorption, and

(Testimony of C. O. G. Miller.)

every few years something would be suggested about it.

Q. It was a matter which was more or less constantly——

A. (interposing) It was chronic.

Q. Do you recall the acquisition by the Western Power Company, which was the holding company of the Great Western Power Company, of the control of the San Joaquin Light & Power [531] Company? A. I do very well.

Q. Do you recall about what date that was?

A. I am not quite sure, but in 1917 Pacific Lighting Corporation thought of buying the San Joaquin and I think it was shortly afterwards that the Western Power bought it.

Q. You mean 1917 or 1927?

A. 1917, the Lighting Company—I don't know when the Western Power bought it. I thought it was only a few years afterwards.

Mr. Bosley: Not as late as 1927 because they were operating at that time.

The Witness: Mr. Wishon would know.

Mr. Phleger: I think the record will show the acquisition was in 1925.

By Mr. Phleger:

Q. Now, after the Western Power Corporation had acquired control of the San Joaquin Light & Power, already having control of the Great Western Power Company, do you recall the North

(Testimony of C. O. G. Miller.)

American Company in turn acquiring control of the Western Power Company? A. Yes.

Q. Following that acquisition was the question of the Pacific Gas and Electric Company acquiring the majority stock of both the Great Western and San Joaquin Light and Power [532] Company more or less constantly a subject of discussion by the directors of the Pacific Gas and Electric Company?

A. In general terms; yes.

Q. Do you recall when the active negotiations commenced between representatives of the Pacific Gas and Electric Company and the North American Company regarding the later purchase?

A. I couldn't state it at all closely, but I think it was in the early part of 1929.

Q. Describe, if you can, the course of those negotiations.

A. I was an outsider then regarding the negotiations. The question was whether the Pacific Gas was willing to buy the property at the price asked. That was the question; whether they could afford to pay the bonus which they did pay to obtain it.

Q. The Pacific Gas and Electric Company was always desirous of acquiring those properties, was it not? A. Yes.

Q. And you have described it as whether or not it was willing to pay the price asked?

A. That is it. That is what it was in effect.

Q. Who conducted the negotiations on behalf of the Pacific Gas and Electric Company?

(Testimony of C. O. G. Miller.)

A. Mr. Hockenbeamer. [533]

Q. Do you know who represented the North American Company in most of those discussions?

A. I think Mr. Black did.

Q. Did Mr. Hockenbeamer consult you frequently in connection with the negotiations?

A. Yes. It is a hard question to answer when you say "frequently". Whenever he, which he did frequently, found something which was a little uncertain in his mind, he would ask the Executive Committee "What do you think of this?"

Q. Who were on the Executive Committee at that time with whom he consulted?

A. Frank Anderson. And in the early part, I think, John Drum was on it and resigned later, and Fred Elsey took his place. I think Fred Elsey was on the Committee at the time the purchase was made. I think that was all—and myself. After the purchase the number of the Executive Committee was increased to make a place for Mr. Earl.

Q. Was Mr. Chickering a member?

A. That is right. He came in with the Western States.

Q. So that at that time the Executive Committee consisted of——

A. (interposing) There were four.

Q. (continuing) —Mr. Hockenbeamer, Mr. Anderson, Mr. Elsey, yourself and Mr. Chickering?

A. That is right. I forgot Mr. Chickering. [534]

Q. That is, the President and four others?

(Testimony of C. O. G. Miller.)

A. That is right; four others.

Q. Were all of the members of the Executive Committee quite active in connection with the consideration of the transaction? A. Yes.

Q. And that continued for a period of months, did it? A. Yes.

Q. Before it was finally consummated?

A. That is right.

Q. Now, in the course of those discussions was anything reported by Mr. Hockenbeamer to the Executive Committee with respect to the position which the North American Company would occupy as a stockholder in Pacific Gas and Electric Company in the event the transaction were consummated? A. Yes.

Q. State the course of those discussions and what was said, in substance?

A. In substance, Mr. Hockenbeamer made a statement of this kind: "A great danger which might arise from this consolidation would be that the North American Company would overwhelmingly be the largest stockholder."

I cannot recall the number of shares they had, but something like 2,000,000 or more. It was discussed by the [535] members of the Committee for half a dozen times or more. I don't just know how long it was discussed, but Mr. Hockenbeamer stated the North American Company was willing to stipulate that it would never use its stock to attempt to gain control, or something to that effect.

(Testimony of C. O. G. Miller.)

Q. That was an assurance, was it, which was given by Mr. Hockenbeamer in behalf of the North American Company to the members of the Executive Committee when this transaction was being discussed, was it not?

A. That is my recollection. I think it was repeated probably half a dozen times during the negotiations.

Q. Was the question of the position of the North American Company, in the event the transaction was consummated, one which received repeated and active consideration by the Executive Committee?

A. Yes.

Q. Would you have voted to consummate the transaction unless there had been, that is, if there had not been some assurance with respect to the position of the North American Company after the transaction?

A. I am not sure, but I think not. It would have depended a great deal on what the attitude of North American was stated to be. If I had thought they were going to sell the stock it would have made no difference. It is not a [535-A] desirable thing to have any stockholder with 10 percent, 12 percent or 15 percent of the stock.

Q. That was in your mind? A. Strongly.

Q. And in the minds of the other members of the Executive Committee?

A. I am sure it was.

Q. Was it in Mr. Hockenbeamer's mind?

(Testimony of C. O. G. Miller.)

A. Yes; it was constant with him.

Q. And it was only after Mr. Hockenbeamer had given the assurance, or had made the statement that the North American Company would not attempt, as a stockholder in Pacific Gas and Electric Company, to control or dominate it that the transaction was authorized? A. That is correct.

Q. Do you recall where you were when the news came that the negotiations which were then in progress had been consummated?

A. I received a cable when I was in Calcutta, India, stating that the agreement had been signed and asking for the approval of Mr. Frank Anderson and myself.

Mr. Phleger: I offer in evidence, as Applicant's Exhibit No. 43, a telegram addressed to C. O. G. Miller, Singapore, signed by Hockenbeamer, dated March 7, 1930, and attached to it a copy of a cablegram addressed to Hockenbeamer, San Fran- [536] cisco, signed by Miller, dated March 16, 1930.

The Examiner: Have you seen these, Miss Calkin?

Miss Calkin: No objection.

The Examiner: Without objection these documents just described will be received in evidence and marked Applicant's Exhibit 43-A and 43-B, respectively.

(The documents referred to above were marked Applicant's Exhibits 43-A and 43-B, respectively, and were received in evidence.)

(Testimony of C. O. G. Miller.)

By Mr. Phleger:

Q. Mr. Miller, directing your attention to the copy of the cable addressed to you, do you recall having received the original of that cable?

A. Yes.

Q. It reads as follows:

"March 7, 1930

"C. O. G. Miller

"Amexco, Singapore

"Agreed one million eight hundred twentyfive thousand vendor cancelling nineteen million two hundred thousand advances including three million three hundred thousand since close August stop. Three directors one member executive committee no proxy but positive assurances non interference stop. Economies now conservatively estimated one and one half million after which earnings vendors properties estimated three dollars per share [537] issued. Agreement subject approval directors and commission. Latter apparently favorably inclined. Board meeting Wednesday. O'Brien personally assured me of his support stop. Expect quick action. Hope satisfactory and appreciate expression yourself and Anderson. Regards.

Hockenbeamer."

Do you recall receiving that cablegram?

A. I do.

Q. Do you know—what did you take to be the meaning of the expression "three directors one

(Testimony of C. O. G. Miller.)

member executive committee no proxy but positive assurances non interference" to mean?

A. To mean that the North American expected three representatives on the Board and one on the Executive Committee, and they would not give a proxy, but positive assurance they would not attempt to interfere with the management.

Q. Did that constitute an assurance to you upon matters which had previous thereto been the subject of discussion between yourself and Mr. Hockenbeamer? A. Yes.

Q. And was it also an assurance to Mr. Anderson on matters that Mr. Anderson had previously discussed? A. Yes.

Q. You replied to that telegram, did you not, by a [538] telegram reading as follows—I am reading from the remainder of the exhibit:

"Hockenbeamer Gas Co.

"San Francisco, California.

"Message received sixteenth. We approve. I congratulate you.

"Miller."

You sent that telegram, did you? A. Yes.

Q. The "we" there mentioned includes Mr. Anderson and yourself? A. Yes.

Q. And the telegram was sent with the approval of Mr. Anderson, was it not?

A. Yes, I asked him the distinct question: "Am I authorized to state that you approve?" and he said "yes".

(Testimony of C. O. G. Miller.)

Q. Following the consummation of the transaction three directors were elected to the Pacific Gas and Electric Company Board representing the North American Company, were they not?

A. Yes.

Q. Do you know who those men were?

A. I know Mr. Earl and, I believe, Mr. Freeman, and one of the others, but I am not sure.

Q. Mr. Black? [539]

A. I think he was; that is right.

Q. Mr. Black, Mr. Gruhl and Mr. Earl?

A. That is right.

Q. And was the Executive Committee then increased by another member?

A. Yes; Mr. Earl went on that committee.

Q. Now, from the time that this transaction was consummated up until the time Mr. Black became president of the company did you ever hear in the meetings of the Board of Directors, or of the Executive Committee, or otherwise, any statement purporting to represent the attitude of the North American Company with respect to any pending matter or past transaction?

A. I have no recollection of it. I think I would recollect it if there had been anything of importance.

Q. When did you first become acquainted with Mr. Black?

A. It would be difficult for me to say. I am not

(Testimony of C. O. G. Miller.)

sure. He was active in the Western Power or the Great Western, the operating company here, for many years. I occasionally met him. He was a member of the Pacific Union Club. I occasionally saw him there. However, I have known his wife's family from the time I was a small boy. I have visited at his father's and mother-in-law's house before Mrs. Black was born. I felt that I knew him a little better than if he had been a complete stranger. [540]

Q. You knew of his work, did you not?

A. Yes.

Q. When he was an officer of the Great Western Company in competition with the P. G. & E.?

A. I did.

Q. And did his work make an impression upon you and the other officers of the P. G. & E.?

A. I think so.

Q. Great Western was a very active competitor, was it not?

A. Yes. It doesn't usually bring about cordial relations, but it does sometimes.

Q. Mr. Miller, you have known Mr. Foote for many years, have you not?

A. Yes; 35 years or so.

Q. How long have you known Mr. John D. McKee, who is a director of the company?

A. Well, about 50 or 60 years. He is an old man. He is two days older than I am. On his birthday,

(Testimony of C. O. G. Miller.)

when I see him, I say "Poor old fellow. You are older than I am."

Q. How long have you known Mr. Livermore?

A. Longer. Mr. Livermore's parents went to the same church that my parents did in Oakland sixty years ago and I used to see him when he was a little boy. [541]

Q. How long have you known Mr. Chickering?

A. The same length of time as Mr. Livermore.

Q. How long have you known Mr. Downing?

A. Twenty odd years; 30 odd years.

Q. How long have you known Mr. Coghlan?

A. About the same length of time that I have known Mr. Downing.

Q. How long have you known Mr. McIntosh?

A. About 50 years.

Q. How long have you known Mr. Wishon?

A. Twenty-five years or more; perhaps 30.

Q. How long have you known Mr. Silas H. Palmer?

A. He is not a generation younger than I am, but he occupies about the same place with Mr. Livermore. I used to see him as a little boy in Oakland.

Q. How long have you known William W. Crocker? A. Forty years.

Q. Did you know his father, William H. Crocker? A. Yes; very well.

Q. He was a director for many years in the company? A. Yes.

(Testimony of C. O. G. Miller.)

Q. Did Mr. William H. Crocker take an active interest in its affairs? A. Yes. [542]

Q. How long had you known Mr. Henry D. Nichols?

A. Fifty years. He was educated in Oakland where I lived, up to 1904.

Q. You had known Mr. Hockenbeamer many years previous to his death, had you not?

A. Yes.

Q. And you had known Mr. Creed intimately before he became president? A. Very well.

Q. And you, of course, had known Mr. Fred Drum?

A. I had known him since he was a boy, but he was older, so I will say, since I was a boy.

Mr. Phleger: Mr. Examiner, it is now after 4:30, and I suggest that this is an appropriate time to adjourn.

The Examiner: If you have reached a convenient place we will recess now.

The hearing will be resumed on Monday morning at 10:00 o'clock in the hearing room of the Railroad Commission in the State Building at the Civic Center, San Francisco.

(Whereupon, at 4:30 p. m. an adjournment was taken to Monday, November 18, 1940, at 10:00 a. m. in the hearing room of the Railroad Commission, State Building, San Francisco, California.) [543]

(Testimony of C. O. G. Miller.)

Hearing Room, California State Railroad Commission, California State Building, San Francisco, California, Monday, November 18, 1940.

Met, pursuant to adjournment, at 10:00 o'clock a. m. [544]

PROCEEDINGS

The Examiner: Mr. Miller, I think you were on the stand. Will you please resume the stand?

Whereupon—

C. O. G. MILLER

was produced as a witness for and on behalf of the Applicant and, having been previously duly sworn, testified further as follows:

Direct Examination (Resumed)

By Mr. Phleger:

Q. Mr. Miller, you have testified that you knew Mr. Black for at least 20 years, and that you met him first when he was connected with the Great Western Power Company before he went east?

A. Yes.

Q. After the transaction in 1930 when the Pacific Gas and Electric Company purchased the stocks from the North American Company did you see Mr. Black frequently or not?

A. I would not say frequently. I am not quite sure whether it was once or twice a year, but I think it was about twice a year that he used to come to California and I would always see him then.

(Testimony of C. O. G. Miller.)

Q. Would he call on you? A. Yes.

Q. And on those occasions did you discuss the Pacific Gas and Electric Company business? [545]

A. Yes.

Q. In any detail?

A. In no great detail, but in general terms.

Q. Now, that situation continued, did it not, up until 1935 when Mr. Hockenbeamer died?

A. Yes.

Q. Had you known Mr. Hockenbeamer long?

A. About 25 years, I think. I think it was just after the earthquake; since then.

Q. That was during the period he was with the P. G. & E.? A. Yes.

Q. You recall Mr. Hockenbeamer died sometime in November of 1935? A. Yes.

Q. Had Mr. Hockenbeamer been ill for any extended period?

A. I think not. My recollection is he was away from the office not to exceed ten days, and it may have been less than that. It was a great surprise to me when I heard of his death.

Q. You would say that was true also with respect to the rest of the directors, they had not anticipated his death

A. I think that is the case.

Q. Now, will you explain what took place following the news of Mr. Hockenbeamer's death with respect to the selection of a successor as president of the company?

(Testimony of C. O. G. Miller.)

A. I can only testify from my own part in it. At that [546] time Mr. Fred Elsey was alive and was a member of the Executive Committee. Mr. Anderson had recently died. I forgot who succeeded him now. I think it was Mr. Livermore. I am not sure. Was Mr. Livermore——

Q. (interposing) On the Executive Committee—yes. A. Yes.

Q. He wasn't on at that time?

A. I wasn't sure whether it had been filled. I am not sure whether it had been filled or not. But Mr. Elsey had been a member of the Executive Committee for many years and he and I discussed the vacancy. It was suggested that Mr. Black would make a very good president. We agreed on it and asked the other members of the Committee what they thought about it. My recollection is that—I am not sure whether we took up the matter with Mr. Black before the other directors were consulted or not. I can't remember that.

Q. Do you recall who first mentioned Mr. Black's name?

A. I don't know. At the meeting the first time that the matter was discussed with me was with Mr. Elsey alone.

Q. But did you bring up Mr. Black's name or did Mr. Elsey? A. I think I did.

Q. Did Mr. Elsey agree that he would be the best person to select? A. Yes.

Q. And what happened then? [547]

(Testimony of C. O. G. Miller.)

A. My recollection is that we thought we should immediately consult the other members of the Executive Committee first. I am not sure whether that was anyone else besides Mr. Chickering. I can't remember. If Mr. Livermore had not been appointed on the Committee he couldn't have been there. Anyway, Mr. Chickering acquiesced, or was quite enthusiastic, and I think then we consulted the other directors privately, Mr. McKee, Mr. Crocker and, I think, Mr. Livermore.

We then had to find out whether Mr. Black was available. I telephoned to Mr. Fogarty. I had several telephone conversations with Mr. Fogarty. There were some suggestions made. I think Mr. Chickering said that it was very important that Mr. Black should sever his connection entirely with the North American Company. He was asked if he were willing to do this and he said he was.

Q. Did all of the directors that you spoke to agree in the selection of Mr. Black? A. Yes.

Q. It was unanimous? A. Yes.

Q. Do you recall having spoken to Mr. William H. Crocker?

A. I am not sure whether I did it, or whether Elsey, or whether Chickering did. I am not sure. My recollection is that he was ill at the time and sent word that—I think he said it was all right. I am sure it was something to the [548] effect that whatever we agreed on would be satisfactory.

Q. Did you have any communication with any-

(Testimony of C. O. G. Miller.)

one in the North American Company previous to the decision on your part, and that of Mr. Elsey, that Mr. Black should be selected? A. No.

Q. You were entirely a self-starter, were you not? A. Absolutely.

Q. And the North American had nothing whatever to do by way of suggestion or otherwise with his selection, is that correct?

A. Absolutely nothing; no. Mr. Fogarty expressed surprise when I asked him.

Q. What were the reasons for your decision to select Mr. Black?

A. There were many. One reason was Mr. Black was a young man and we thought it was important that the Chief Executive position be held by a man who was young, who had many years before him.

We were familiar with Mr. Black's work and knew a great deal about him. We had seen enough of him to make us feel that he would be satisfactory.

I will make a slight digression here if it is all right. One of the directors, when Mr. Black's name was suggested said something like this: "Jim Black is a splendid man, but shouldn't we canvass all the available men in the country?"

There was one director who said, "I think it would be [549] a great mistake to take a man you do not know a great deal about personally."

A man might make a great success as head of a company in Philadelphia, Boston or Chicago, and

(Testimony of C. O. G. Miller.)

not fit in here. It takes you a few years to know the peculiarities of men.

I said I would rather take Mr. Black, knowing him as we do, than anybody that we did not know.

That was another reason why he was selected.

Q. Was the fact that Mr. Black was a California man, and had been intimately connected with the management of properties which constituted the Pacific Gas and Electric system, one of the factors in your selection? A. It was.

Q. Did you consider the fact that Mr. Black was connected with the North American Company advantageous or not when it came to consider him for this position?

A. I think someone mentioned that should not be considered against him. But it was also mentioned that it seemed impossible that he would not be satisfactory to the North American.

Q. Was that connection considered by you a desirable factor, or a negative or passive factor?

A. Passive, but not negative. I think it is good to have your stockholders satisfied with the executive management.

Q. But the fact that the stockholder would be satisfied [550] was not considered by you, was it, as an affirmative reason for his selection?

A. No.

Q. Did you talk this matter over with Mr. Black over the telephone? A. Yes.

Q. And in that conversation, whether it was one

(Testimony of C. O. G. Miller.)

or more instances, did you ask him whether or not, if he accepted this position, he would sever all relationship of every kind with the North American Company? A. Yes.

Q. And what was his answer?

A. He said he would.

Q. Did you have this conversation with him before he came out to San Francisco?

A. Yes. My recollection is I had the conversation before he was elected president.

Q. In other words, you obtained from him his assurance that he would be available if called and that he would sever all of his relationships with North American if he was called, is that correct?

A. Yes.

Q. Do you recall the directors' meeting at which he was elected?

A. I cannot recall any of the details except he was elected. [551]

Q. Was the action unanimous? A. Yes.

Q. Was the matter of his selection taken up with the group of, what I might term, officer directors, after all of the non-officer directors had first decided upon it?

A. Yes. It was taken up with Mr. Downing.

Q. And all of the members of the Board were acquainted with the decision of the Executive Committee and non-officer directors before the meeting was held? A. Yes.

Q. While the matter of Mr. Black's selection

(Testimony of C. O. G. Miller.)

was under consideration did any stockholders of the company speak to you with respect to the vacancy?

A. Yes.

Q. Did any of the stockholders, without prior mention of Mr. Black's name, or suggestion by you, themselves bring up Mr. Black's name?

A. Yes. The most conspicuous was Horace D. Pillsbury. He has died since then. He was Chairman of the Board of the Pacific Telephone & Telegraph Company. He was a close friend of mine. He was riding with me one day in a car and he said, "Of course, it isn't any of my business but have you considered Jim Black for the vacancy in the Pacific Gas?"

I said, "Shssh! Shssh! He is going to be elected."

Q. Was Mr. Pillsbury a large stockholder in the Pacific [552] Gas and Electric Company?

A. I don't remember now how many shares he had. I think he had at one time something like 10,000 or 15,000 shares. I believe they now have a number of thousand shares in some of the trusts he made.

Q. He and his father were interested in the Snow Mountain Power Company which became part of the Pacific Gas and Electric Company system?

A. Yes. That is how they acquired their stock.

Q. There were other stockholders besides Mr.—

A. (interposing) Yes. I cannot recall the names now, but I think I must have been stopped at least by five or six stockholders who said to me casually,

(Testimony of C. O. G. Miller.)

"If you are looking for a president why don't you consider Jim Black."

I told them afterwards they were all wise men.

Q. Mr. Miller, does Mr. Black control the Pacific Gas and Electric Company?

A. I believe not.

Q. Does the Executive Committee fully and freely discuss all matters that come before it for decision? A. Yes.

Q. And is that true also of the Board of Directors? A. Yes.

Q. Mr. Miller, have you ever at any time, or in any connection, observed anything indicating that the Pacific Gas [553] and Electric Company is controlled, directly or indirectly, by the North American Company, or that the management or policies of the Pacific Gas and Electric Company are subject to a controlling influence, directly or indirectly, by the North American Company?

A. No.

Q. If the North American Company were to attempt to control or influence, directly or indirectly, the management or policies of the Pacific Gas and Electric Company would you oppose such attempt? A. I would.

Q. Do you think that the other directors of the Pacific Gas and Electric Company, other than Mr. Fogarty and Mr. Freeman, would also oppose such an attempt? A. I believe they would.

Q. In the event that the North American Com-

(Testimony of C. O. G. Miller.)

pany were to attempt to control or influence the management or policies of the Pacific Gas and Electric Company, do you think it would be able to do so? A. I think not.

Q. If the North American Company attempted to secure sufficient proxies to obtain a majority of the representation at a stockholders' meeting, and such an attempt were resisted by the management and directors of the Pacific Gas and Electric Company, do you think that the North American Company would be [554] successful in its attempt?

A. I do not.

Q. Will you give the reasons for your answer to the last question?

A. I assume, of course, that the management of the Pacific Gas and Electric Company would remain proper and would attempt to fulfill its duties. The Board of Directors of the Pacific Gas has representatives of a number of groups of influential people in San Francisco. I think if those groups agreed on any course as being the proper one for the corporation to follow, and the management of the corporation was in accord with that, I think they could stand up against anything.

Mr. Phleger: I think that is all, Mr. Miller.

The Examiner: Miss Calkin, cross examination?

Cross Examination

By Miss Calkin:

Q. Mr. Miller, what is the business of the Pacific Lighting Corporation?

(Testimony of C. O. G. Miller.)

A. It is a holding company. I think it is the second oldest holding company in this country.

Q. It is a holding company for utility stocks?

A. Yes.

Q. What are its principal subsidiaries?

A. The Southern California Gas Company, the Southern Counties Gas Company, the Santa Maria Gas Company. At one time I think they owned many other companies, but they have [555] been consolidated mostly now.

Q. Applicant's Exhibit No. 32 lists the American Trust Company as holding about 24,000 shares of the preferred stock of the Applicant and 25,000 shares of the common. Am I correct in assuming that that is owned by the American Trust Company for the benefit of others, numerous other stockholders, numerous other persons? A. Yes.

Q. Mr. Miller, do you own any of the securities of any of the subsidiaries of the North American Company? A. No.

Q. Referring to Applicant's Exhibit 43 (a), I believe, which is the telegram you received from Mr. Hockenbeamer, wherein it is stated that, in substance, the North American Company would not give a proxy, what was your understanding of that language in that telegram?

A. The meaning of the telegram?

Q. Yes—that portion of it.

A. That the North American Company would not give an irrevocable proxy, but had promised in

(Testimony of C. O. G. Miller.)

good faith not to attempt to obtain control or seek proxies.

Q. It means it would not give any irrevocable proxy for the slate of the directors that the management might choose?

A. I would put it broader than that: That they were unwilling to give an irrevocable proxy to anyone for a long [556] period of years. It was not unexpected by me, at least.

Q. Mr. Miller, were you ever associated with the Western Power Corporation, or any of its subsidiaries, prior to 1930?

A. No. I was in the original syndicate which bought the bonds—I forget the name of it—of the steam plant they had in Oakland. I think that was in about 1910, but I am not quite sure. I was out of it within six months.

Q. Those were the bonds of one of the subsidiaries of Western Power Corporation?

A. Yes. For the moment I have forgotten its name. I think it was the Electric Generating Company—something like that.

Mr. Gerdes: California Electric Generating Company.

The Witness: I got into that entirely outside the Western Power. J. Barth & Co., Brokers, put me into that.

By Miss Calkin:

Q. As a director of the Applicant, what contacts

(Testimony of C. O. G. Miller.)

do you have with the Vallejo Electric Light & Power Company, if any? A. None.

Q. Are Vallejo's operating problems discussed at the meetings of the Applicant's Board?

A. Casually.

Q. To what extent?

A. Mention has been made at some of the meetings of the [557] conditions surrounding the Vallejo Company.

Q. Do you know who determines the policies of the Vallejo Electric Light & Power Company?

A. I believe the president and his group.

Q. Do you know who the president of the Vallejo Electric Light & Power Company is?

A. I do not for the moment recall his name, but I would know it if I heard it.

Q. Do you know whether or not the Applicant has made any attempts to acquire all of the outstanding capital stock of the Vallejo Electric Light & Power Company?

A. I am not sure about that.

Q. Mr. Miller, who would you say were the most dominant persons in the Applicant's history prior to 1930?

A. Of the Pacific Gas and Electric Company?

Q. Yes.

A. When the company was formed E. J. de Sabla and John Martin, Richard Hotaling, Frank Drum, Louis Sloss and John A. Britton.

(Testimony of C. O. G. Miller.)

Q. Could you describe Mr. Hockenbeamer's outstanding characteristics?

A. It is a little hard to do it briefly. I would say this about Mr. Hockenbeamer: That he had what I called a flare for money and in determining operations he was always anxious that there should be no mistake made as regards the [558] financial outcome.

I have heard him express a number of times, when a proposition came up as to whether the Pacific Gas should buy some other property, I have heard him use this expression: "It will pay its board and lodging." He was a very careful man.

He was comptroller some years ago before he was the president.

Q. Would you say he was more skilled in the financial policies of utility operations than in the operating angle of the business?

A. I am not sure. In general terms, I don't think he paid very much attention to the detail of operations. I am not sure he was skilled in the financial end. He had been connected with N. W. Halsey & Co., a bond house, for a great many years. I think before that he was with the Baltimore & Ohio Railroad Company, but I am not sure.

Q. Who would you say was the most active in the negotiations which culminated in the acquisition by the Applicant of the securities of the subsidiaries of Western Power Company?

A. I would say that Mr. Hockenbeamer was 99

(Testimony of C. O. G. Miller.)

percent in behalf of Pacific Gas and Electric Company.

Q. Do you know who carried on those negotiations in behalf of the North American Company?

A. I believe Mr. Black did mostly.

Q. Which company would you say was most anxious to consummate that transaction, the Applicant or the North American [559] Company?

A. That is a very difficult question to answer. Perhaps it would be correct to say both.

Q. Do you know which company approached the other in 1929 in regard to the acquisition of those securities? A. I am not sure.

Q. Did Mr. Hockenbeamer keep the Board informed as to the various terms and negotiations, and obtain its advice, or were the negotiations largely carried on by Mr. Hockenbeamer without much attention to the Board?

A. Mr. Hockenbeamer kept the Executive Committee posted.

Q. You were a member of the Applicant's Board when Standard Gas & Electric Company acquired a large block of its common stock, were you not?

A. Yes.

Q. Do you recall that Standard Gas & Electric Company was required to give a written assurance as to its participation in Applicant's affairs and the disposal of its stock?

A. I have some recollection of it, but it is not very distinct.

(Testimony of C. O. G. Miller.)

Q. Do you know what assurances were given by Standard in regard to the extent of its participation in Applicant's affairs? A. I am not sure.

Q. Do you know what assurances were given as to the [560] disposal of its stock?

A. No, I am not sure about that. My recollection is there was something said—if they ever wished to dispose of their stock they would notify the company so it could be done in an orderly manner and not have a bad effect on the market.

Q. Do you know whether or not the North American Company was requested to give a written assurance as to the extent of its participation in Applicant's affairs?

A. No, I am not sure; but I know the matter was discussed.

Q. Were you ever told that North American refused to give the same assurances which the Applicant had received from Standard Gas & Electric Company?

A. My impression is that I was aware of that before I left here. I left San Francisco in January 1930. The cable indicated it, or stated it. "Stated" is better than "indicated".

Q. I think the cable stated that they had given some assurance as to non-interference?

A. Yes. "* * * no proxy but positive assurances non-interference."

Q. Do you know whether or not that assurance was reduced to writing?

(Testimony of C. O. G. Miller.)

A. I do not, but I am of the impression it was not.

Q. And you did not know whether or not North American [561] was requested to reduce those assurances to writing and, if they were so requested, why they refused to do so?

A. The reason why they declined it is impossible for me to divulge because I do not know. I can understand the reluctance of any company having an investment of $50,000,000 in an enterprise, stating that they would for an indefinite period waive their rights of expressing an opinion.

Q. You and other members of the Board were apprehensive concerning the possible attempt by North American to dominate the affairs of the Applicant after its acquisition of these securities, were you not, Mr. Miller? A. I think I was not.

Q. And in view of the fact that North American Company was at that time one of the largest holding companies in the country, why were you not apprehensive?

A. I was of the opinion that with about one-sixth of the stock—that the groups in California, if they were in accord on any policy, would be able to carry easily against one-sixth or one-fifth of the stock.

Q. But the Board did discuss the future influence that North American might have over Applicant's policy?

(Testimony of C. O. G. Miller.)

A. Absolutely. You know when you are married it is a long contract.

Q. Did Mr. Black ever make any representations to the Board at any meetings attended by you regarding the extent of North American's participation? [562] A. None that I am aware of.

Q. Did you ever discuss the matter personally with Mr. Black? A. No.

Q. Was the matter discussed by you with any other representatives of the North American Company? A. No.

Q. Did you have any conversations during this period with Mr. Fogarty, that is, before the deal was consummated?

A. No. I think I did not know him them.

Q. Was the telegram, which has been introduced in evidence as Applicant's Exhibit No. 43(a), your first knowledge that North American would have three representatives on Applicant's Board and one representative on its Executive Committee?

A. I think not. I cannot recall all of the details, but that seemed to be a normal representation. In fact, it was less on the Executive Committee. If there were five on the Executive Committee it was a small representation.

Q. Do you know whether or not other members of the Board were familiar with the arrangement, that is, that North American should have three representatives on the Board and one on the Ex-

(Testimony of C. O. G. Miller.)

ecutive Committee, prior to the time the deal was consummated?

A. There must have been notice of it. [563]

Q. Do you know why North American now has only two representatives on the Board, rather than three, and none on the Executive Committee?

A. My recollection is that we needed a vacancy on the Board and, I think, it was suggested to the North American Company that they did not need an absentee director, but I am not quite sure of it.

Q. Do you recall any discussions relating to a request of the North American to not have three representatives on the Board in order that Mr. Palmer might be elected?

A. Was that a request from the North American?

Q. No. A request to North American that they waive their right to one director.

A. I think that is the case, but I am not sure.

Q. Has anyone representing the North American Company ever told you that its representation on the Board was not as important with Mr. Black as president as it was during Mr. Hockenbeamer's lifetime? A. No.

Q. Do you consider Mr. Black as a North American representative on your Board? A. No.

Q. Have you ever so considered him since his election as president? A. No.

Q. How is the Proxy Committee, or the proxies for the [564] annual stockholders' meeting selected?

(Testimony of C. O. G. Miller.)

A. Either the Board of Directors or the Executive Committee passes a resolution directing the Secretary to send out for proxies.

Q. And that resolution names the proxies?

A. Yes. That resolution names the parties to whom the proxies are to run.

Q. What part does the president play in the suggestion of those names? A. I don't know.

Q. Do you know who makes up the slate of directors to be voted for by the proxies?

A. I would say the Board of Directors does. I am not aware at any meeting of every director not being re-elected.

Q. Does Mr. Black advise you as to who North American's nominees of the directors for the ensuing year will be? A. I am not aware of it.

Q. As to the directors who are employees of the Applicant, which directors, in your opinion, are most active in the affairs of the company?

A. I would think the four members of the Executive Committee, Mr. Chickering, Mr. Livermore, Mr. Palmer and myself.

Q. How would you compare the functions of the Board with those of the Executive Committee?

[565]

A. I would say the Executive Committee acts between sessions of the Board. The Executive Committee meets once a week. The directors meet usually once a month.

Q. Does the Executive Committee, generally

(Testimony of C. O. G. Miller.)

speaking, consider more detailed matters than are presented to the Board?

A. Enormously more.

Q. Does Mr. Black ever advise the Board as to North American's recommendations with respect to a particular matter which he submits to it for its consideration?

A. I have never known him to do so.

Q. Since you have been a director have you ever been advised from any source what North American's wishes were with respect to a particular matter relating to the Applicant's business?

A. I am unaware of any except the dividend.

Q. Does the Board ever inquire of Mr. Black whether he has conferred with North American representatives on major problems, and, if so, what its suggestions have been?

A. I have never heard anyone ask that question.

Q. What weight would you give to a suggestion of North American, in view of the fact that that company is the largest stockholder of the Applicant?

A. I would consider it very carefully, with great consideration. I would give great consideration to the suggestion, which I thought was made in good faith, that came from [566] any large stockholder.

Q. How frequently have you discussed matters pertaining to the Applicant with Mr. Fogarty?

A. It would be a little difficult to say; perhaps four or five times.

(Testimony of C. O. G. Miller.)

Q. During what period of time?

A. The last five years.

Q. Prior to that time did you have any discussions with Mr. Gruhl, Mr. Dame or Mr. Doolittle?

A. No. I have no recollection of meeting any of those gentlemen.

Q. Did you know Mr. Freeman?

A. No, not unless I met him—if he has been here for directors' meetings I probably met him, but I don't recollect that.

Q. Have you ever talked to Mr. Fogarty over the telephone regarding Applicant's affairs, other than the conversations you had with respect to Mr. Black's presidency? A. No.

Q. Have you ever had any correspondence with any representatives of the North American Company? A. No.

Q. Did Mr. Hockenbeamer ever advise the Board of suggestions made by North American during his presidency? A. I do not recollect it. [567]

Q. Has there ever been any major difference of opinion between the Board and Mr. Black since he has been president of the Applicant?

A. Not that I am aware of.

Q. Has the Board ever disapproved a matter recommended by Mr. Black?

A. Not that I am aware of.

Q. Was the relationship between the Board and Mr. Hockenbeamer always harmonious?

A. Yes.

(Testimony of C. O. G. Miller.)

Q. Did you consider Mr. Earl to some degree, at least, as spokesman for the North American while he was a member of your Board and Executive Committee? A. Yes.

Q. Did he frequently advise the Board as to North American's views on particular matters?

A. I never heard him do it once.

Q. You do not know the extent to which Mr. Earl conferred with North American representatives? A. I do not.

Q. In view of the fact that Mr. Earl was a representative of the North American Company on your Board, and attended Board meetings and Executive Committee meetings with a fair degree of regularity, it is true, is it not, that since Mr. Earl's death North American has not had a representative on [568] the Board that has been as active as Mr. Earl was?

A. Yes, that is quite true. I think in Mr. Earl's case—I am not sure of this at all—Mr. Earl was the president of one of our local companies, and I am of the opinion that he received a salary from the North American Company as long as he was on the P. G. & E. Board. I always thought—call it a pension or anything you like, he had lost his job and I am of the opinion he was paid by them.

Q. You mean in his capacity as an officer of Western Power Corporation——

A. (interposing) To be their representative. That was my opinion.

(Testimony of C. O. G. Miller.)

Q. Mr. Earl died only a few months prior to Mr. Hockenbeamer's death, did he not?

A. Yes.

Q. Do you know whether or not any of the other director's of the Applicant talked to Mr. Black prior to the time he was elected president?

A. I do not know; I think not.

Q. Well, did the Excutive Committee, or the directors, in effect appoint you as their representative to carry on the conversations with Mr. Black? Was that the understanding that you were to do that? A. Yes.

Q. Now, what was the substance of your conversation—— [569] scratch that.

Am I correct in assuming that before talking to Mr. Black you talked to Mr. Fogarty on the phone about this matter? A. Yes.

Q. What was the substance of your conversation with Mr. Fogarty?

A. It is a little hard to give it, but I will give you my recollection of it. It was something like this: That we, knowing the Executive Committee and the directors were considering the selection of Mr. Black to be president, asked him if there was any reason he knew of why Mr. Black could not serve.

Q. What was Mr. Fogarty's reply?

A. He said "No". He thought Mr. Black would do well, or would be a proper party, or something of that kind.

(Testimony of C. O. G. Miller.)

Q. How many telephone conversations did you have with Mr. Fogarty respecting this matter?

A. I am not sure. I think it was three; it may have been four.

Q. Did you talk to Mr. Fogarty again, after your first conversation, before you talked to Mr. Black? A. I think so.

Q. What did you tell him on that occasion?

A. My recollection is that I told him that the Executive Committee and directors had decided to ask Mr. Black. I [570] think I asked him to speak to Mr. Black about it, to see if he could get in touch with him.

Q. What did Mr. Fogarty tell you on that occasion?

A. He acquiesced, or said he was glad of Mr. Black's selection, or something of that kind.

Q. What was the substance of your first conversation over the telephone with Mr. Black?

A. I will have to trust my memory entirely. I think I told him that the Board of Directors would like to have him as president of the company, and asked him if he would accept and, if he did, we would like to have him sever his connection with the North American Company.

Q. And prior to that telephone conversation Mr. Fogarty had acquainted Mr. Black with the conversations that you had had with Mr. Fogarty?

A. I would assume he did. I think he did.

(Testimony of C. O. G. Miller.)

Q. Did you have more than one conversation with Mr. Black before he came out here?

A. I am not sure.

Q. He was elected prior to the time he arrived in San Francisco, was he not? A. Yes.

Q. Was it possible that Mr. Black, because of his association with North American, might be influenced and dominated by North American considered by the Board before it [571] selected him as president.

A. I think not. I think the Board felt, knowing Mr. Black, that if he took the presidency of the Pacific Gas and Electric Company he would be the president of that company and would not be influenced by anybody else.

Q. Before Mr. Black was offered the position did you receive any assurances from him as to what his future attitude toward North American suggestions would be?

A. No. He was not asked for any. I think it was not considered at all.

Q. Do you think that it would be possible for North American to exert a very substantial influence over the Applicant's management and policies if Mr. Black conferred freely with North American before submitting matters to your Board?

A. Well, that is a hypothetical question. I don't know. I can't allow the premises.

Q. Why, Mr. Miller, would you oppose any attempt on the part of North American to control or

(Testimony of C. O. G. Miller.)

exercise a controlling influence over the Applicant?

A. I consider it would be injurious to the corporation. If they were to control the corporation, among other things, we would be under the Securities Bill, that lovely Bill, which is a very fine Bill for those who like it. I think, as a corporation, and as its predecessors have been California people, I think since 1854, I think there is a considerable [572] sentiment among those who have succeeded the men who were in control of the company fifty and sixty years ago that that control should stay in California. I think it is better for the company.

Q. You feel it would be detrimental to the public relations of the Applicant if it were controlled by——

A. (interposing) Yes. And outside of that I think it would be detrimental to the corporation. I'll gladly accept that suggestion. It would be bad for public relations. You would have every yapping politician claiming it was a foreign corporation and it is not.

Q. You do not know of your own personal knowledge the extent of Mr. Black's contacts with the North American people?

A. I am not sure I understand the question, but I think the answer is "No".

The Examiner: Do you want to have the question read?

The Witness: No. I am not quite sure what it

(Testimony of C. O. G. Miller.)

means. I understand the words. It is a little indefinite—"contacts".

By Miss Calkin:

Q. It would be possible, would it not, for Mr. Black to obtain advice from the North American Company on problems of the Applicant without the knowledge of the directors?

A. Certainly; yes.

Q. What major changes, if any, have occurred in the Applicant's operating and financial policies since Mr. Black [573] became president of the company?

A. I am not aware of any. I think they are approximately the same as they have been.

Q. As a director of the Applicant are you familiar with the reports sent by the Applicant to North American?

A. No; that is, if they are different from what are sent anybody else.

Q. Mr. Black has never advised the Board as to the extent of information concerning Applicant's operations which is furnished the North American?

A. My recollection is that he has mentioned it two or three times, but I am not quite sure just what it was he sent. Anyone who is familiar with the SEC has probably seen the vast number of papers which accumulate information on all subjects. I know every utility is in the habit of sending a great deal of information to bond houses, invest-

(Testimony of C. O. G. Miller.)

ment counsellors, who request it. I am of the impression that anything that Mr. Black sends the North American is not more than would be sent practically to any large stockholder who requested detailed information.

Q. Do you know whether or not a copy of the Applicant's proposed budget is submitted to North American before it is submitted to the Board for its approval?

A. I am sure that it is not.

Q. What is the extent of Mr. Black's authority to [574] expend money for items included in the budget without first submitting the matter to the Executive Committee?

A. I don't know. I would say, however, that Mr. Black has, in the past five years, so conducted his affairs that if he were to report to the Executive Committee, "I spent this large sum of money for the good of the company, but I didn't have an opportunity to obtain its approval beforehand," it would be approved.

Q. Is it correct to say that the Board takes action on all major problems of the Applicant relating to finance and construction, and other matters, without being advised as to North American's viewpoint on the problem?

A. I think I would say that it is never advised as to the viewpoint of the North American. I am of the opinion that any information given to North American is not information which has not been

(Testimony of C. O. G. Miller.)

decided. Any information given to North American, as I understand it, is what has been accomplished, or what has been decided.

Q. Do you know whether or not any phase of the Hetch Hetchy situation has ever been discussed with the North American people?

A. I do not know.

Q. A moment ago you referred to the fact that you did become acquainted with the North American's objection to some action taken by the Board in reference to dividends. Who [575] acquainted you with that objection, and what was the substance of it?

A. I acquainted myself. I was in New York and I received the news, and I immediately called on the North American Company and said "Those boys are not running that thing properly in San Francisco. We will have to make some change there." I don't remember which officer it was, but he and I sent a joint telegram to Mr. Hockenbeamer asking them to reconsider it. I thought it was a great mistake to reduce the dividends. Here was a corporation that had paid dividends without interruption for many years, and had for many years accumulated a modest reserve. I said, "That is what the reserve is for; in case of a bad year you can continue to pay dividends."

It is just like a man who has a large income and suddenly he loses his income, and he goes hungry because he is not earning anything.

(Testimony of C. O. G. Miller.)

I thought it was a mistake. They thought so too. But it had no effect.

Q. The dividends were reduced, I believe, in the last quarter, or the second quarter——

A. (interposing) It was reduced at the meeting in September, whatever the year was.

Q. Of 1933? A. Yes.

Q. It was not restored, I believe, until the second [576] quarter in 1936?

Mr. Phleger: The last quarter in 1936.

By Miss Calkin:

Q. During that period before it was restored, what action, if any, did you take in an effort to get it restored?

A. After the dividend had been reduced I think I made no special effort to restore it. The mistake was made, I think, in reducing it. After the dividend had been reduced, once you have done the damage, you might as well go along until everybody is satisfied.

Q. What action, if any, was taken by the North American Company, after the dividend was reduced, in an effort to get it restored?

A. One of the officers of the North American Company, I am not sure who it was, joined me in a telegram from New York to Mr. Hockenbeamer suggesting that it should be reconsidered.

The Examiner: That is the same telegram you referred to a moment ago?

(Testimony of C. O. G. Miller.)

The Witness: Yes.

By Miss Calkin:

Q. Do you know of any other action taken by the North American Company in that regard?

A. No, I do not.

Q. At whose suggestion were the dividends increased in [577] 1936?

A. I do not know. I cannot remember it now. I will say it was at the suggestion of all of the directors.

Q. Do you know what part, if any, North American took in connection with the increase of the dividend?

A. I don't know. My recollection now is it was entirely appropriate to restore the dividend to the old rate when it was done.

Q. Do you know whether or not Mr. Black advised the Board as to what North American's attitude was considering the increase of the dividend at that time?

A. I do not, but it wasn't necessary. Any large stockholder who felt the dividend was appropriate would be glad to have it restored.

Q. Can you think of any situation pertaining to the Applicant which would have been different if North American owned no stock of Applicant and had received cash for the securities of the subsidiaries of Western Power Corporation?

A. I think it would have made no difference.

(Testimony of C. O. G. Miller.)

Q. Would you say North American has never in any manner participated in the affairs of the Applicant? A. I think that is correct.

Q. Do you know who the bankers for the Western Power Corporation system were, prior to 1930?

A. I know the Anglo were the people here, but I do not [578] know the eastern people, who they were.

Q. Do you know whether or not there was any agreement as to whether or not the houses, banking houses that had participated in past financings of the Western Power Corporation would have a claim on future financing by the Applicant, or the subsidiaries taken over by the Applicant in that transaction?

A. I have no distinct recollection. My impression is that something was said that they would be considered.

Q. But you do not recall any of the houses—what is the full name of that bank?

A. The Anglo California Trust Company, it is now.

Mr. Bosley: Anglo California National Bank.

The Witness: They are out of it anyway now.

By Miss Calkin:

Q. Was that company at that time engaged in the underwriting business?

A. No; but the Fleishhackers were.

Q. What was the name of their underwriting counsel, if you know?

(Testimony of C. O. G. Miller.)

A. M. & H. Fleishhacker.

Q. I believe the testimony shows that the National City Company headed all of the Applicant's business from 1917 to 1931. Do you know how National City Company got the leadership of Applicant's financing, Mr. Miller? [579]

A. The National City Company had an office here. The National City's predecessor was N. W. Halsey & Co. and had been the original finance agents of the corporation when it was formed in 1905. It was the natural thing to run along, unless there was some special reason for a change.

Q. With whom, in the National City organization, were you acquainted in 1930?

A. I don't know. It is hard for me to remember the names.

Q. Was the National City Company ever considered a California banking house?

A. I don't—it was improper to consider it so, although it had an office here of some considerable size.

Q. You considered it a New York house?

A. Of course, it was a New York house.

Q. To what extent did the Board participate in the selection of syndicate managers prior to 1930?

A. I don't know.

Q. Would you say that the selection of the National City Company in the underwritings of the Applicant was made by Mr. Hockenbeamer or his predecessor, Mr. Creed?

(Testimony of C. O. G. Miller.)

A. About 94 percent.

Q. Do you know whether or not the change of leadership from the National City to some other banking house had ever been considered prior to the time National City Company went [580] out of business, went out of the underwriting business?

A. Oh, yes. Mr. Hockenbeamer considered it frequently. I recollect very well once he had a bid, or a tentative bid, from National City, and he mentioned to me that Dillon Read had wanted to get the business, and he was wondering, if Dillon Read came in and offered a quarter or a half point higher, whether he wouldn't have to give the business to them.

Q. Was that before or after North American acquired its interest in the applicant?

A. It was before. I remember telling him I wouldn't do it even if they offered a point higher, because it was only being done to get the business, to edge in, and I thought the business should be continued where it had been satisfactorily handled and proper compensation paid.

Q. Do you know anything about the efforts of Blyth & Co. to get the leadership of Applicant's business during the time National City Company had the leadership, if there were any such efforts?

A. Well, I don't know that there were any efforts made. I think they may have suggested they would be glad to have the business.

Q. Do you recall the first financing by the Ap-

(Testimony of C. O. G. Miller.)

plicant after the National City Company ceased to be in the underwriting business, and which financing occurred in March of 1935?

A. I don't know who handled it—was it Blyth & Co. [581] in 1935?

Q. No. That was Lazard Freres & Co.

A. Yes; that is right.

Q. Do you know how Lazard Freres & Co. got the leadership of the syndicate which purchased the $45,000,000 bond issue of the Applicant in 1935?

A. I am not sure. I can't remember his name, the head man there——

Q. (Interposing) Mr. Russell, Stanley Russell?

A. Probably so. An old friend of Mr. Hockenbeamer's, and it seems to me he had been with the National City. I think that is the way it happened. It was largely personal. You cannot take 25 people into your confidence on how you are going to make your financial bargains.

Q. Who would you say selected Lazard Freres & Co. to head that syndicate, Mr. Hockenbeamer or the Board? A. Mr. Hockenbeamer.

Q. In other words, the Board left pretty largely up to Mr. Hockenbeamer to make such selection?

A. I wouldn't put it that way. I would say that Mr. Hockenbeamer stated, recommended that this arrangement be made with these various banking groups, as to certain leadership, and that the Board

(Testimony of C. O. G. Miller.)

has an opportunity to say whether they do or do not approve.

Q. And the Board approved his recommendation? [582] A. Yes; it was a common thing.

Q. Who determined the amount of securities that would be issued at that time, and the type of security which would be issued?

A. Technically, the Board of Directors.

Q. But in the first instance who formulated the plan of refinancing?

A. I don't know—it was done in the P. G. & E. office under Mr. Hockenbeamer. Someone made an estimate of how much money was needed, how much money they wanted to have on hand, and what they thought was wise to do.

Q. Well, did Mr. Russell ever approach you in an effort to get the leadership of the Pacific Gas business? A. I have no recollection of it.

Q. Did you ever discuss with the North American people the leadership of any of Applicant's financing? A. No.

Q. Now, prior to the formation of the underwriting syndicate which purchased Applicant's bonds in March, 1935, did any representatives of any other banking house approach you in an effort to get the leadership of that piece of business?

A. I don't know. I think at least three or four various houses came, their representatives, and talked to me about it. [583]

(Testimony of C. O. G. Miller.)

Q. Do you recall which representatives of which house?

A. I can't recollect now. I always said I had nothing to do with it; that that was Mr. Hockenbeamer's job, that he was the man to talk to about it.

Q. Do you know Mr. Blyth?

A. Very well. He is a close friend of mine.

Q. Isn't it true that the firm of Blyth & Co. has headed a number of issues for Pacific Lighting Corporation? A. Yes.

Q. What period of time have you known Mr. Blyth? A. 30 years; perhaps a little longer.

Q. Do you know Mr. Ford, Mr. Bernard Ford?

A. Yes.

Q. Is he related to you? A. Yes.

Q. What is his relationship?

A. He is my son-in-law.

Q. With what firm is Mr. Ford associated?

A. Blyth & Co.

Q. Has he been associated with Blyth & Co. over some period of time?

A. I don't recollect. I think it is only six or seven years.

Q. Did Mr. Ford, or Mr. Blyth, ever talk to you, after March of 1935, concerning Blyth & Co.'s desire to get the [584] leadership of Pacific Gas business? A. Probably.

Q. What, if anything, did you tell these gentlemen?

A. I can't recollect, but I am very confident I

(Testimony of C. O. G. Miller.)

told them I would be glad to see the leadership brought to California.

Q. Would you personally have selected Lazard Freres & Co. syndicate manager of the March 1935 issue? A. I don't know, but I think not.

Q. Do you know whether or not Mr. Hockenbeamer, or any other member of the Applicant's Board, conferred with North American in regard to the selection of Lazard Freres & Co. as syndicate managers? A. I don't know.

The Examiner: We will take our morning recess for about ten minutes.

(Whereupon a short recess was taken after which proceedings were resumed as follows:) [585]

The Examiner: Ready to proceed, Miss Calkin?

Miss Calkin: Are you ready, Mr. Phleger?

By Miss Calkin:

Q. Mr. Miller, I believe the evidence shows that Blyth & Company headed the next case of Applicant's financing which was in June of 1935 on the west coast and participated in the management fee. Did you have anything to do with Blyth & Company's getting a better position in the June issue than it had in the March issue?

A. I think not.

Q. Did anyone during that period, that is, in the middle of June 1935, ever acquaint you with the fact that Blyth & Company's representatives in New York City were endeavoring to get Mr. Fo-

(Testimony of C. O. G. Miller.)

garty and Mr. Black to exert pressure on Mr. Hockenbeamer to head your business?

A. I was not aware of it.

Q. Do you recall seeing Mr. Black in California in the latter part of August, 1935, or the early part of September of that year? A. I cannot.

Q. Do you recall any conversations having had, which you had with Mr. Black prior to the time that he became president regarding the leadership of Applicant's financing? A. I do not.

Q. Do you know George Leib? [586]

A. Yes.

Q. He is associated with the New York office of Blyth & Company, is he not? A. Yes.

Q. Do you know Mr. Shurtleff? A. Yes.

Q. He is associated with the San Francisco office of Blyth & Company?

A. Yes. I might add, Mr. Leib, is a very old friend of mine, was the Captain of my camp in the Bohemian Grove until he moved to New York City. I had a very close personal relationship with him.

Q. Mr. Miller, I hand you a copy of a telegram from Mr. Leib to Mr. Shurtleff, in order to refresh your recollection, and call your attention—that is rather difficult to read. A. I can read it.

Q. Wait a minute, there is some particular part that I want; calling your attention to that portion which says, "Mr. Miller will certainly go to bat for Bernard and us".

(Testimony of C. O. G. Miller.)

Mr. Phleger: Just a moment. I move that be stricken out.

The Examiner: It may be stricken.

Mr. Phleger: How can you refresh the recollection of [587] a witness from something the witness has never seen. Have you ever seen that wire, Mr.——

The Witness: No.

Miss Calkin: Well, I think a person's recollection can be refreshed from a document, Mr. Phleger. I think if——

Mr. Phleger: Not from any document he has never seen before.

Miss Calkin: I differ with counsel's interpretation of the rules of evidence on that point.

Mr. Phleger: Maybe we can get at it some other way.

Miss Calkin: Off the record, I questioned him with reference to his contact concerning Blyth & Company.

Mr. Phleger: If you ask him if his memory is refreshed, I have no objection to it being done that way; I don't want the contents of the wire in.

Miss Calkin: No, I don't want that in either.

Mr. Phleger: Has it refreshed it, if it does refresh his memory?

The Examiner: Have you read that wire to which your attention has been directed, Mr. Miller?

The Witness: I have not read it all; it is very indistinct. I have read what Miss Calkin——

(Testimony of C. O. G. Miller.)

The Examiner: To which she has directed your attention?

The Witness: Yes. [588]

The Examiner: All right. Have you a question now?

Miss Calkin: Does that refresh your recollection, Mr. Miller, concerning any efforts which Blyth & Company might have been making as early as February, 1935, to get the leadership of this business?

A. Not particularly. I have no recollection of ever asking Mr. Drum, Mr. Creed, Mr. Hockenbeamer or Mr. Black to give their financing to any one. I have—whenever I have been asked by anyone "What do you think of so and so", or "so and so", I have always freely stated what I thought, and I have many times stated I would be glad to see the business go to Blyth & Company. I have never asked the president to change, I will say, their financing; it's not like giving group insurance or placing your pension fund where other great insurance companies can take care of you, it's done very largely for some personal reason that the agent is agreeable to you, or the people who have presented it in some special way.

By Miss Calkin:

Q. Now, I believe the Applicant had its first financing after Mr. Black's presidency in March of 1936 when it issued ninety million dollars in bonds?

A. Yes.

(Testimony of C. O. G. Miller.)

Q. Do you recall that Blyth & Company headed that piece of business? [589]

A. I think they did, but——

Q. Now, do you know how Blyth & Company got the leadership of that issue?

A. I am not sure. I think it was because Mr. Black selected it.

Q. Well, did you ever recommend the selection of Blyth & Company to Mr. Black?

A. I think not. I think, however, that Mr. Black spoke to me about it and asked me what I thought of Blyth & Company, or I think there were two or three seeking it. I said that I would be very glad to see it go to Blyth & Co.

Q. Would you say that the responsibility for Mr.—for Blyth & Company's selection as syndicate manager in the March, 1936, issue, was due to Mr. Black's choosing that house?

A. It is a little difficult to answer that with a yes or no answer. Mr. Black presumably asked other members of the Executive Committee, perhaps of the directors, what they thought of it and I would say he determined what the composite wish was.

Q. Do you know whether or not any of the directors of the Applicant were anxious that Blyth & Company replace Lazard Freres as syndicate managers?

A. I don't know; I think there was some, but I don't [590] know.

(Testimony of C. O. G. Miller.)

Q. Do you recall talking to Mr. Black about this matter in his office in the presence of Mr. Chickering?

A. I do not. I may easily have done so.

Q. I hand you—I think this is easier for him to read this—what purports to be a copy of a letter from Mr. Ford to Mr. Blyth, dated December 19, 1935, for the purpose of refreshing your memory.

A. I do not—I do not recollect the conversation, but the matter of financing was very often mentioned.

Q. Well, did Mr. Blyth or Mr. Ford during this period, that is, after Mr. Black became president of the company, urge you to recommend them as the leader of this next piece of Applicant's business?

A. My recollection is that neither of them did; both of them probably spoke to me about it. I have never—I have no recollection of them ever asking me to take any action.

Q. Well, did Mr. Leib ever make such a request?

A. I have no recollection of it. They knew perfectly well that if the matter came up how I felt. It was not necessary.

Q. And what was your feeling in that respect?

A. I was for Blyth & Company, and I am now.

Q. What were your reasons for being for Blyth and [591] Company?

A. Blyth & Company was the largest California house that could very easily do the business, it was

(Testimony of C. O. G. Miller.)

a California corporation, I had a son-in-law who was a partner, and the other two partners were very close friends of mine; I think it was a natural thing; Lazard Freres were a California house only 45 years ago, they moved away from San Francisco; there was no reason why they should have the business at the same rate. It was the natural thing to want your friends to have it if the conditions warranted.

Q. Do you think the other members of your Board felt the same way? A. I think so.

Q. In other words, it is your opinion that the leadership of Blyth & Company was more agreeable to the Board than that of Lazard Freres?

A. I am confident it was.

Q. Do you think but for Mr. Hockenbeamer, Lazard Freres would not have had the 1935 business? A. I think that is probably the case.

Q. Do you know what part, if any, North American played in the selection of Blyth & Company?

A. I do not.

Q. Did Mr. Black ever tell you that Blyth and Company was the choice of the North American Company for the [592] Applicant's business?

A. I don't know. I have no recollection of it. He might have said so.

Q. I believe the evidence shows that Dillon Read & Company had a substantial participation in the first issue of the 1936 ninety million dollar issue?

A. Yes.

(Testimony of C. O. G. Miller.)

Q. Did you know at that time that Dillon Read had long headed financings for subsidiaries of the North American Company?

A. I don't know. I have no recollection; in fact, I never paid any attention to the financing of the North American Company. Dillon Read have been in practically every large financing in the United States for 20 years.

Q. But you never knew if such were a fact that Clarence Dillon and Harrison Williams were such very close friends? A. I did not know it.

Q. Did you know why Dillon Read got a participation in the ninety million dollar issue in 1936?

A. I don't know. The supposition is, of course, you well know, every underwriter scatters it around.

Q. You don't know who is responsible for Dillon Read & Company's participation in that issue?

[593]

A. No.

Q. Would you say that Mr. Black was more or less amenable to suggestion by the Board than Mr. Hockenbeamer was on matters of financing of the Applicant?

Q. I don't know, but I would say he gave suggestion—Mr. Black gave the suggestion more hospitable reception than Mr. Hockenbeamer.

Q. Do you know who carried on the negotiations between the Applicant and Blyth & Company?

A. Mr. Black.

Q. (continuing) ——in regard to the financing?

(Testimony of C. O. G. Miller.)

A. Mr. Black.

Q. Were those negotiations carried on in New York City or in San Francisco?

A. I don't know. I thought largely in San Francisco, but it is possible they were carried on in New York.

Q. Do you know whether or not Mr. Black conferred with the representatives of the North American Company regarding the price that the securities sold by the North American Company after he became president, regarding what the price should be or what the spread should be on those issues?

A. I don't know. I think it would be likely North American Company had many many sales of securities and it was—it would be the natural thing, he may have known—[594] he may have known enough about them to, I don't know, but it would have been a natural thing to do.

Q. Dillon Read & Company, as well as Leib Keystone & Company, substantially participated in the March, 1936 issues, and did not participate in the subsequent issue of the Applicant in that year; do you know why they did not have participation in those issues?

A. I think they were not chosen to be under grouped.

Q. Do you know who made up the membership, or who determined the membership of the underwriting syndicates? A. I don't know.

Q. You don't know whether that was done by

(Testimony of C. O. G. Miller.)

Mr. Black or by Blyth & Company, the syndicate management?

A. It was probably done between them; chances are that Blyth & Company would put in anyone that the Applicant wanted in.

Q. I believe the last piece of Applicant's financing was in 1936 when fifteen million dollars of bonds were privately placed. Who determined that issue should be sold privately rather than publicly?

A. The Board of Directors or the Executive Committee or Mr. Black.

Q. And what were the reasons for placing that issue privately?

A. My recollection is it saves the registration [595] expense and, of course, it saves a lot of time; under your new rules you don't have that 20 days any more; it's not quite so bad.

The Examiner: The Amendment to the Act.

The Witness: Yes.

By Miss Calkin:

Q. To your knowledge has the North American Company in some way participated in the financing of the Applicant during Mr. Black's presidency?

A. I think it has not.

Miss Calkin: I think that is all.

Redirect Examination

The Examiner: Mr. Phleger?

By Mr. Phleger:

Q. Mr. Miller, you were asked some questions

(Testimony of C. O. G. Miller.)

with respect to the acquisition by Pacific Gas and Electric Company of certain securities from Standard Gas & Electric Company as the result of which Standard Gas & Electric Company became a substantial stockholder in the Pacific Gas and Electric Company? A. Yes.

Q. And I think you were also asked with respect to the attitude of the company upon Standard becoming a substantial stockholder. Do you remember any comments made at that time by Mr. Creed with respect to that [596] circumstance? A. Yes.

Q. What did he say?

A. The Standard Gas & Electric was the first very large stockholder in the company that was not distinctly, I will say, in the California group, and I remember Mr. Creed stating that he was glad to have an undertaking from them, that they would not interfere with the management in any way; but he said he considered that it was unnecessary. He stated something like this, "If the Standard Gas & Electric Corporation made an effort to obtain control of this company all I have to do is to stand on the sidewalk and say 'California stockholders look out; here is an Eastern company attempting to gain control of our property.'" And he said, "We would obtain proxies beyond any question." And I believe that same condition is true today.

Q. You were asked with respect to Mr. Black's method of conducting business before the Executive Committee and Board of Directors, and whether any

(Testimony of C. O. G. Miller.)

of his recommendations were ever disproved. Is it not a fact, Mr. Miller, that Mr. Black takes up with the Executive Committee all major questions of policy and discusses them thoroughly over a period with them before formulating a decision?

A. Yes.

Q. So that when Mr. Black finally arrives at a [597] recommendation or decision it is usually after the matter has very thoroughly been inquired into and the assurance of the Executive Committee and Board of Directors already sought and ascertained. Is that not true? A. That is correct.

Q. In answering the question as to whether or not you considered it desirable that a foreign corporation control the Pacific Gas and Electric Company you gave various answers. As a matter of fact, Mr. Miller, do you think that a principal located 3,000 miles away could effectively control a California public utility?

A. Not as well as it is controlled locally, I am sure.

Q. So that any principal that distance away could not do as good a job as a local one?

A. I think that is correct.

Q. You stated that you thought the views of every large stockholder would be given serious consideration by the Board of Directors in the management of the Pacific Gas and Electric Company?

A. Yes.

Q. Do you think the same would be true of the

(Testimony of C. O. G. Miller.)

recommendations and viewpoint of a small stockholder if they were meritorious? A. Yes.

[598]

The Examiner: I think he so testified, Mr. Phleger. He said every stockholder.

The Witness: Any stockholder, and especially a large one.

Mr. Phleger: That is all.

The Examiner: Any further questions, Miss Calkin?

Miss Calkin: Just one question, Mr. Miller.

Recross Examination

By Miss Calkin:

Q. There are several utility companies operating in the state of California which are effectively controlled by holding companies many miles distant, are there not A. There are some, yes.

Q. Are you acquainted with the San Diego Company which is a subsidiary of Standard Gas and Electric Company? A. Yes.

Q. That is a large—very large operating company, is it not? A. Yes.

Miss Calkin: That is all.

Mr. Phleger: That is all.

The Examiner: You may be excused. Thank you, sir.

The Witness: Thank you.

(Witness excused) [599]

Mr. Phleger: Mr. McKee.

Whereupon——

JOHN D. McKEE

was produced as a witness for and on behalf of the Applicant, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Mr. McKee, will you state your full name and your address for the record?

A. John D. McKee, M-c-K-e-e. Residence or business?

Q. Residence?

A. 3456 Washington Street, San Francisco.

Q. How long have you been a resident of California, Mr. McKee?

A. Since 1865.

Q. You were born in this state, were you?

A. Born 1865.

Q. When did your family first come to California? A. 1850.

Q. What business did your parents, or your father engage in?

A. He was in the banking business since 1850.

Q. What is your business? [600]

A. Well, I am a banking and corporation officer, and I think that is the——

Q. How long have you been in the banking business? A. Since 1884.

(Testimony of John D. McKee.)

Q. With what banks have you been connected?

A. I started with the Tallant Banking Company of which my father was cashier; and upon his death, in 1893, I succeeded him as cashier of that bank. In 1898 the business of that bank was sold to the Crocker National Bank. And in the following few months later I participated with others in the organization of the Mercantile Trust Company which is now known as the American Trust Company. I was secretary and cashier of the Mercantile Trust Company, then vice-president, then president and now I am chairman of the Board.

Q. Are you a member of the Board Committee of that bank?

A. I am, yes. Trust Committee, we call it.

Q. Trust Committee?

A. Yes, Trust Committee.

Q. What are the duties of that committee?

A. They examine the securities, or consider the list of securities that are held by the Trust Department in various trust capacities and advise the trust officer in his department with respect to purchases and sales thereof. [601]

Q. As a member of that committee do you have occasion to review the holdings of the bank as trustee consisting of shares of stock of this Applicant and also bonds of this Applicant? A. I do.

Q. State what commission you are a director of?

A. I am director of the Pacific Gas and Electric Company, Honolulu Plantation Company, Honolulu

(Testimony of John D. McKee.)

Oil Company, Pacific Portland Cement Company, Hutchinson Sugar Plantation Company, Paauhau Sugar Plantation Company, Kilawea Sugar Company, Welch & Company, and I have a number of other commssions which really are such as my own corporation, the McKee Company, the Lagunitas Development Company, operating a tract of land, and the San Geronimo Valley Water Company.

Q. And you also——

A. I think that is all.

Q. (continuing) ——act as attorney in fact for Mrs. Paul I. Fagan? A. I do.

Q. She has a large interest, has she, in this state and elsewhere? A. Yes.

Q. And you have acted in that capacity for her and her mother for many years?

A. Yes, since 1912, during the lifetime of her father, [602] beginning with the lifetime—during the lifetime of her father.

Q. And do you own shares of stock of the Pacific Gas and Electric Company? A. I do.

Q. And I will ask you by reference to Exhibit 32 to state the number of shares of stock of this company which are, or any affiliated interest you have in the Pacific Gas and Electric Company?

A. I own personally 456 shares, as attorney in fact—I am attorney in fact for Mrs. Fagan who owns 5,290 shares; I am one of the officers of the trust in which Mrs. Fagan has a life interest and which holds 1200 shares of preferred stock. The

(Testimony of John D. McKee.)

first two items were common stock. I am a trustee also for Mrs. Josephine Grant McCreary, and that trust owns 580 shares of preferred and 530 shares of common; I am trustee for a similar trust for Mrs. Edith Grant Ordway that holds the same amount, 580 preferred and 530 common; I am a director of Grant Company which owns 2440 shares of preferred; I am chairman of the Board of American Trust Company which Trust Company holds in various trust capacities 24,281 shares of preferred and 25,162 of common.

Q. Do you own any shares of North American Company, Mr. McKee? A. No. [603]

Q. Have you ever owned any shares of that company? A. No sir.

Q. Are you now, or have you ever been substantially interested personally in any eastern corporation? A. No.

Q. Your interests have always been primarily in California western enterprises, is that not so?

A. That is right.

Q. Do you know of anyone who does own any stock in the North American Company?

A. I do not.

Q. When did you first become a director in the Pacific Gas and Electric Company?

A. In 1914.

Q. Will you state the circumstances under which you became a director?

A. Mr. Frank G. Drum at that time was presi-

(Testimony of John D. McKee.)

dent of the company and he invited me to take a place on the Board, there being some vacancy.

Q. Have you remained a director ever since that time? A. I have.

Q. Were you closely associated with Mr. Drum during his lifetime? A. I was.

Q. State generally what that association consisted [604] of?

A. Mr. Drum was a stockholder and a director in the Mercantile Trust Company, which, as I said, was organized in 1899, and early in the 1900's he obtained a substantial interest in the California Gas & Electric Corporation, which is one of the predecessors of the Pacific Gas and Electric Company, which I know about because our bank handled the transaction as escrow holder. That either was a personal holder or representative of someone else; I am not sure as to that. But he was vitally interested in the Pacific—the Pacific Gas and Electric Company and its predecessor companies.

Q. Mr. McKee, do you know the history of the formation of the Pacific Gas and Electric Company and the activities of some of its predecessors and were you acquainted with some of the principal actors?

A. Yes. The company had its beginning in the establishment by Eugene de Sabla of the Nevada Power Company and I knew de Sabla very intimately. Then he and John Martin created the Yuba Electric Power Company which absorbed the Ne-

(Testimony of John D. McKee.)

vada and those companies finally were merged into the Bay Counties Power Company, which was the first of the companies to extend the line to reach Oakland; then, following the Bay Counties was the California Gas Electric Corporation, then when they operated the San Francisco and Oakland—[605] San Francisco Gas Company, Oakland Gas Company, they changed the name to the Pacific Gas and Electric Company and, as I stated, the Mercantile Trust Company was formed in 1899, and the certification of the issue of the Yuba Electric bonds was the—was the first of that kind of business that we executed, and there was a continuous relationship between the power company and the bank ever since.

Q. Did you know Mr. de Sabla and Mr. Martin personally? A. I did, yes.

Q. What other individuals were active in the early years of the Pacific Gas and Electric Company?

A. Why, there was—Conlisk was secretary, Dick Hotaling was treasurer, then and de Sabla and Martin were the chief executives.

Q. Remember Mr. Britton?

A. Oh, yes, he came in with the Oakland Company; yes, Mr. Britton was the first president of the Pacific Gas, I think he came in with the Oakland Company.

Q. With what regularity have you attended

(Testimony of John D. McKee.)

meetings of the Board of Directors of the Pacific Gas and Electric Company?

A. I think, aside from the several months I spent in the hospital in 1934 and 1935 and the recent trip which I [606] made to Honolulu, I missed very few meetings. I don't think I missed as much as one a year.

Q. Have you always taken an active interest in the affairs of the company?

A. I have.

Q. Are matters which comes before the Board of Directors freely and fully discussed?

A. Yes sir.

Q. In your opinion, does any director dominate the meetings of the Board? A. No, does not.

Q. Have you ever hesitated at Board meetings to freely express your views on the subjects brought before the meetings? A. No sir.

Q. If I were to tell you that the record of the company shows that you have attended 113 meetings of the Board of Directors out of their 128 held since January 1, 1930, would you be surprised?

A. That is 15 I had missed.

Q. Yes.

A. Well, I don't think I have missed more than that.

Q. 88 per cent record of attendance?

A. Yes sir.

Q. Were you acquainted with Mr. Frank Dame during [607] his lifetime?

(Testimony of John D. McKee.)

A. No, I may have met him at the meetings; I had no acquaintance that extended beyond that.

Q. Were you acquainted with Mr. Edward Gruhl during his lifetime?

A. No. The same situation with respect to him.

Q. Were you acquainted with Mr. Doolittle?

A. Only met him at the meetings.

Q. Are you acquainted with Mr. Herbert Freeman?

A. No, I think I never saw Mr. Freeman.

Q. Are you acquainted with Mr. James F. Fogarty? A. Only met him at one or two meetings.

Q. How many times in the aggregate would you say that you have met or talked with those gentlemen? A. Not more than once or twice.

Q. At the times that you met them did you discuss with them Pacific Gas and Electric Company affairs?

A. Well, as I say, I met them at principally—I don't—couldn't recall meeting any of them except during the meetings of the Pacific Gs, and of course, in the meetings we discussed all these matters, but I had no personal discussion with any of them.

Q. Have you ever communicated with Mr. Dame, Mr. Gruhl, Mr. Doolittle, Mr. Fogarty or Mr. Freeman, or any of them, by letter, telegraph, or any other means? [608] A. I have not.

Q. Did any of those gentlemen ever request you

(Testimony of John D. McKee.)

to act in any particular manner as a director of the Pacific Gas and Electric Company.

A. No sir.

Q. Were you acquainted with Mr. Guy Earl in his lifetime? A. Yes sir.

Q. He was a director, for a time, was he not, of the Pacific Gas and Electric Company?

A. Yes sir.

Q. Was he a particularly active director?

A. I never observed anything, any of his actions about the Pacific Gas except during the attendance at meetings he was accustomed to making notes of what took place.

Q. Was he very active in proposing policies or measures for consideration?

A. No, he participated in all the discussion freely but he did not initiate particularly or dominate at all.

Q. Was he any more active than any of the other directors? A. No, no more than I was.

Q. Did you ever discuss the business affair or affairs of the Pacific Gas and Electric Company other than at directors meetings of the Pacific Gas and Electric [609] Company? A. I did not.

Miss Calkin: You mean with Mr. Earl?

Mr. Phleger: With Mr. Earl, yes.

The Witness: With Mr. Earl, yes.

By Mr. Phleger:

Q. With Mr. Earl. Did Mr. Earl ever ask you

(Testimony of John D. McKee.)

to vote in any particular way or take any particular action as a director? A. No.

Q. Have you ever had any request from any officer or director or representative of the North American Company to vote in any particular way or take any particular action as director?

A. I recall one instance.

Q. What was that?

A. The—I can't recall the date. I did not bring any notes with me. But at the time the dividend was decreased from $2 per share, at the rate of $2 per share to $1.50, the quarterly dividend, I received a—after that action was taken I received a telegram from Mr. Black and Mr. C.O.G. Miller jointly saying they thought that was a mistake, that it—the mistake might be repaired by having a special dividend, additional special dividend of 12½ cents, which would make an increase of 37 to 50 cents for [610] the quarter, and asked me if I would attend a meeting, if one was called, and favor that, to which I replied that I thought that the action that was taken was fixed and was the proper one to take under the circumstances, and my conclusion was the matter better rest as it was.

Q. Do you remember who was among the directors of the Pacific Gas and Electric Company in September 1933, that voted to reduce the dividend?

A. Mr. Hockenbeamer was president at that time, he recommended the difference on the common

(Testimony of John D. McKee.)

stock, 50 cents on the quarter, then Mr. Frank Anderson, I think, said—well, then, I think the last time we talked about it—oh, we were going to consider something less than that. Then Mr. Anderson proceeded to argue with the earnings being a little disappointing, he thought the dividends should be for a lesser amount, and that was debated back and forth at some length and finally a motion was made and carried that the dividend be declared of 37½ instead of 50, and Mr. Anderson voted to do it. I voted for it; I think Fred Elsey voted for it. I don't remember so much about the others.

Q. Was Mr. Crocker at that meeting?

A. Yes, I think he was. I am not sure about that.

Q. With the exception of that incident you have no recollection of ever having any communication or request [611] with respect to any pending matter from the North American Company or any of its officers or agents?

A. I did not—what was that question?

Q. I say with the exception of the incident you mentioned you have no recollection——

A. (interposing) That is the only case, yes.

Q. How long have you known Mr. D. H. Foote?

A. Can you tell me when he was elected secretary, about a year or so before he was elected secretary of the company; I can't recall that year.

Q. You have known him at least since 1906?

A. Oh, yes.

(Testimony of John D. McKee.)

Q. How long have you known Mr. C. O. G. Miller? A. Over 50 years.

Q. How long have you known Mr. Norman D. Livermore?

A. I have known him for 40 years.

Q. How long have you known Mr. Allen L. Chickering?

A. I have known him for many years, 30 or 40 years anyway.

Q. How long have you known Mr. Downing?

A. I have known him since he was a star on the football team at Stanford in the early nineties.

Q. How long have you known Mr. Coghlan?

A. John Coghlan?

Q. Yes. [612] A. I would say 40 years.

Q. How long have you known Mr. McIntosh?

A. Known him 40 years—let me see, between 35 and 40 years.

Q. How long have you known Mr. Wishon?

A. Oh, 20 years.

Q. How long have you known Mr. Silas H. Palmer?

A. I have known him over 40 years.

Q. How long have you known Mr. William W. Crocker? A. 45 years. William W.?

Q. Yes.

A. I thought you said William H.

Q. William W.

A. William W.? I would say 20 years.

(Testimony of John D. McKee.)

Q. And how long had you known his father before him?

A. Known him since 1894 or 95, 45 years.

Q. How long have you known Henry D. Nichols?

A. I have known him 40 years.

Q. Have you known Mr. Wishon over a period of years? A. Yes.

Q. Before he became president of the company?

A. Yes sir.

Q. Was Mr. Frank B. Anderson active in the affairs of the company during his lifetime? [613]

A. Yes, he was a member of the Executive Committee, and I think took quite an active interest in all matters pertaining to the company.

Q. Did you know Mr. Fred Elsey during his lifetime? A. Very well.

Q. How many years had you known him prior to his death?

A. Well, I have known him since the late nineties, he died two or three years ago; that would be about 40 years.

Q. Was he active in the affairs of the company?

A. He was.

Q. Mr. John Drum you knew also, did you not?

A. Yes sir.

Q. Was he active in his lifetime in the affairs of the company?

A. Yes, he was up to—I think about the time

(Testimony of John D. McKee.)

that Mr. Hockenbeamer's administration began, he was up to about 1820, 1829, 28 or 29.

Q. 1928 or 1929?

The Examiner: 1929?

The Witness: 1929.

By Mr. Phleger:

Q. Yes. He retired, this record shows, early in 1930. [614] A. Was it 30?

Q. Do you recall in 1930 when the Pacific Gas and Electric Company acquired the North American Company, the securities which it held in the Great Western Power Company of California and the San Joaquin Light & Power Company?

A. I do.

Q. Had the question of the acquisition of the Great Western Power Company and its properties been considered over a considerable period, do you know?

A. Yes, I think that had been considered very seriously during Mr. Creed's administration, and then it—nothing came of it, and then I think during Mr. Hockenbeamer's administration that it was revived and finally concluded.

Q. That was sometime in 1930?

A. About 1930, yes.

Q. Do you recall whether in the course of the discussions relative to the acquisition of those companies from the North American the future status of the North American Company as a stock-

(Testimony of John D. McKee.)

holder in the Pacific Gas and Electric Company was discussed?

A. I remember Mr. Hockenbeamer made a statement that—of course, they were acquiring these properties and giving common stock of the Pacific Company's for it, and what seemed like a large amount; he said they had given very serious consideration to whether there was any risk [615] or impropriety in one stockholder—one group having such a large amount of stock, they felt there was no risk in it, but they had given very careful consideration to that feture, and that was for the purpose of assuring other members of the Board as to how they felt about it.

Q. And that statement was made by him before the Board approved the act? A. Yes sir.

Q. Mr. McKee, how long have you known Mr. James B. Black?

A. Since about 1919; that would be 31—over 20 years.

Q. What position did Mr. Black hold when you first met him?

A. He was the general manager or, perhaps, had a more minor situation when I first knew him of the Great Western Power Company, and we had service from the Great Western Power Company in connection with some properties near Napa in which I was interested and we dealt with him as to the furnishing of that service. That was just one incident.

(Testimony of John D. McKee.)

Q. And you have known him, of course, ever since that first meeting? A. Oh, yes.

Q. Following that first meeting did you come more [616] or less frequently in contact with him?

A. I did.

Q. And did you observe his work as an officer of the Great Western Power Company?

A. I think it's right to say, properly say, I did, yes.

Q. Yes. Was that company in active competition with the Pacific Gas and Electric Company?

A. It was, very.

Q. And were its activities frequently the case for discussion in the Pacific Gas and Electric Company's directors meetings?

A. I can't recall that; I wouldn't say that was the——

Q. However, as a director of the Pacific Gas and Electric Company you were conscious, were you not, during all those years, of the competition of the Great Western Power Company?

A. Yes, we had a—we had an active and efficient and aggressive competitor, no doubt about that.

Q. And the actions of that competitor were managed during the early twenties by Mr. Black, were they not? A. Yes sir.

Q. By the way, in speaking of people in the power busines, you have been an executive in the power business yourself, have you not? [617]

A. Yes.

(Testimony of John D. McKee.)

Q. Will you state what your connections have been with public utilities companies other than the Pacific Gas and Electric Company?

A. I had a very large investment myself, and representing the matters of Mrs. Fagan and my friend, J. B. Grant, which they had in the company in the California-Oregon Power Company, I became interested in looking into the matter and finally becoming quite active in its control, and after a number of years of hard struggle, didn't have enough money, didn't have enough earnings, and had partly completed the plants, and finally, however, we managed to complete the principal plant on the Klamath River that we were working at, and I think partly as a defense measure—in 1917 or 18 we succeeded in making a contract with the Pacific Gas for delivery power wholesale which gave an immediate output for that plant, which would have taken a number of years to have worked up for the use of the power, and finally we were able to put the company on its feet and it began to prosper.

In 1926, then, we sold the company to the Standard Gas & Electric Company and all of the original investors were able to receive back what they put in, and had interest and new profit besides.

Q. You were an officer of that company? [618]

A. I was president of the company, yes; I became president of the company.

Q. How many years did you serve as president?

(Testimony of John D. McKee.)

A. Ten years, 10 or—8 or 10 years.

Q. Did you become familiar during that period with the financial—— A. I was.

Q. (continuing)—the matter of financing that company? A. I did, I had to be——

Q. (continuing) ——And dealt with Board underwriters and sold securities?

A. I had practically the whole job to do on that.

Mr. Phleger: If your Honor please, I think this is an appropriate time to adjourn.

The Examiner: All right, we will have the noon recess now until 2:00 o'clock this afternoon.

(Whereupon at 12:10 p.m. an adjournment was taken to 2:00 o'clock p.m. of the same day.) [619]

Afternoon Session

(The hearing was resumed pursuant to the taking of recess at 2:00 o'clock p.m.)

The Examiner: The hearing will resume, please. Whereupon——

JOHN D. McKEE

produced as a witness for and on behalf of the Applicant, having been previously duly sworn, testified further as follows:

Direct Examination (Resumed)

By Mr. Phleger:

Q. Mr. McKee, how often between 1930, when the Pacific Gas and Electric Company acquired the

(Testimony of John D. McKee.)

Great Western and San Joaquin from the North American, and November in 1935, when Mr. Black became president, did you see Mr. Black?

A. I think Mr. Black had taken, or made his residence in New York before 1930, but he made trips to San Francisco at intervals, once or twice a year, and I think he never came here without calling me on the telephone and dropping in to say "hello" just as a matter of acquaintance or friendship. We usually arranged to go to lunch together and have a little gossip about things of mutual interest. I would say twice a year during those five years.

Q. Did he ever during that period ask you to take any action as a director of the Pacific Gas and Electic Company?

A. No, sir. He would say, "How is the company doing," or "Our company is getting along pretty well, I am pleased with [620] the progress," or something of that sort, but he never asked me to do anything on his behalf, or on behalf of his company.

Q. Did these discussions relate specifically to the business of the company or were they general?

A. General.

Q. Do you recall when Mr. Hockenbeamer passed away?

A. Yes. He passed away, I think, it was on Armistice Day in 1935.

Q. Had he been ill for any length of time before his death?

(Testimony of John D. McKee.)

A. No. Paul Downing called me up one morning and said Mr. Hockenbeamer had passed away. I was very much surprised and shocked.

Q. His death had not been anticipated?

A. No.

Q. After his death what took place with reference to the selection of a successor?

A. The next day, within two days of his death Mr. C. O. G. Miller, who was the senior member of the Executive Committee, called me at my office and said he had been giving the matter of a successor to Mr. Hockenbeamer very careful thought; that it was a thing that couldn't be delayed. He said that it was his idea that we ought to select Mr. Black. That was a new thought to me. I suggested to him that we ought to consider, if there were four or five possible candi- [621] dates we should consider all of them so that by a process of elimination we could settle down on the final one.

There was no commitment on my part at that conversation.

Several days afterwards a meeting took place in the President's office of the American Trust Company—Mr. Elsey was then president of the bank—at which Mr. Miller, Mr. Elsey, Mr. Livermore, who were members of the Executive Committee, William H. Crocker and myself were present. We discussed the matter for, I suppose, an hour. Finally we were in agreement unanimously that we should recom-

(Testimony of John D. McKee.)

mend to the Board that Mr. Black be invited to accept the position.

I might say I think the other directors, Mr. McIntosh, and Mr. Chickering, were out of town or weren't available.

That meeting was attended by all of the directors in San Francisco, outside of the members of the staff, excluding Mr. McIntosh and Mr. Chickering.

Q. Was anything said at that meeting to the effect that Mr. Black would be particularly desirable because he was an officer of the North American Company?

A. No. The discussion, we got down to Mr. Black, and we covered such of his career and experience as we knew about. We had known him here prior to 1930, 1928, whatever it was, as the active competitor that you referred to this morning, and he had been brought up in the west and was accustomed to western ways, and had good ability at public relations, and [622] was a good operator, and we know that he had spent several years in the east where he had had experience with the financial systems back there, and we concluded that his career had been in that way rounded out so that he would be able to handle all phases of the job.

Q. Was his age a factor?

A. Yes. He was a middle-aged man and had the advantage of having more years before him than any of the preceding presidents, and had good health and energy.

(Testimony of John D. McKee.)

Q. Mr. McKee, in your decision to support Mr. Black's selection were you subjected to any influence of any kind or character? A. No.

Q. Was your decision your own decision based upon the exercise of your own judgment?

A. Absolutely.

Q. In connection with Mr. Black's selection, had you been communicated with, directly or indirectly, by the North American Company?

A. No. Mr. Miller spoke to me the day I mentioned, and then I chatted some with Fred Elsey, who is my close associate, and next was the meeting in the bank office of these five persons. I had no communication with anybody else.

Q. As a director of the Pacific Gas & Electric Com- [623] pany have you felt perfectly free in exercising your judgment as a member of the Board of Directors? A. I have.

Q. Has anyone ever made an attempt to control your judgment as such a director?

A. No, sir.

Q. Have you ever at any time or in any connection observed anything indicating that the Pacific Gas and Electric Company is controlled, directly or indirectly, by the North American Company, or that the management or policies of the Pacific Gas and Electric Company are subject to a controlling influence, directly or indirectly, by the North American Company? A. No.

Q. If the North American Company were to

(Testimony of John D. McKee.)

attempt to control or influence, directly or indirectly, the management or policies of the Pacific Gas and Electric Company, would you oppose such attempt? A. I certainly would.

Q. Do you think that the other directors of the Pacific Gas and Electric Company, with the exception of Mr. Fogarty and Mr. Freeman, would also oppose such attempt? A. I think they would.

Q. In the event that the North American Company were to attempt to control or influence the management or policies [624] of the Pacific Gas and Electric Company, do you think it would be able to do so?

A. I think it would not be able to do so.

Q. If the North American attempted to secure sufficient proxies to obtain a majority of the representation at a stockholders' meeting, and such an attempt were resisted by the management and directors of the Pacific Gas and Electric Company, do you think that the North American Company would be successful in its attempt?

A. I think it would not be. I think, on the scheme of cumulative voting, if there was a very large representation at the annual meeting they would be able to elect two or three directors, but if there was only 50 percent representation, 51 percent representation of stock present, they wouldn't be able to elect with their holdings more than five directors.

You asked whether they could secure other stock?

Q. Yes.

(Testimony of John D. McKee.)

A. I don't know about stock held in the east by banks as collateral or otherwise, but I think the vast number of Pacific Coast stockholders would be very much incensed or outraged at any such attempt and I do not think it would get any support from any of those people.

Q. As long as the present management is doing an efficient job do you think there is even a remote possibility of the North American Company being able to secure control? [625]

A. I would say not. In fact, I never thought of it in that light, but I am sure it would not be.

Q. Mr. McKee, do you recall during all the time that you have been a director any statement in a meeting of the Board as to what the attitude of the North American Company was with respect to any pending matter, with the single exception of the dividend action in 1933 that you have already testified to? A. Nothing.

Mr. Phleger: That is all.

Cross Examination

By Miss Calkin:

Q. Mr. McKee, do you own any of the securities of any of the subsidiaries of the North American Company? A. No.

Q. Are you familiar with the North American Holding Company's system?

A. I have glanced over the annual report from

(Testimony of John D. McKee.)

year to year, just as a matter of interest, but I haven't got an intimate recollection of it.

Q. Do you own any of the securities of the Potomac Electric Power Company? A. No.

Q. Of the Cleveland Illuminating Company?

A. No. I own no public utility securities of any kind [626] that are organized outside of California.

Q. Were you ever associated with Western Power Corporation, or any of its subsidiaries prior to 1930? A. No.

Q. You never held a financial interest in that holding company system? A. No.

Q. As a director of the Applicant what contacts do you have with the Vallejo Electric Light & Power Company? A. Vallejo?

Q. Yes. A. None.

Q. Are the operating problems of that company discussed at your Board meetings, that is, the Board meetings of the Applicant?

A. No. I think there has been a request for authorization of proxies to vote at some meeting of the Vallejo Company. That is the only thing I recollect.

Q. Do you know who operates that company and who determines its policies? A. No.

Q. What was the extent of your participation in the negotiations which culminated in the acquisition by the Applicant of the securities of the subsidiaries of the Western Power Corporation? [627]

A. I didn't have any participation in that.

(Testimony of John D. McKee.)

Q. Who carried on those negotiations, if you know?

A. Mr. Hockenbeamer and his immediate associates in the organization carried on the negotiations on behalf of the Pacific Gas and Electric Company, and reported at regular frequent intervals to the Board as to the progress being made.

Q. Do you know who represented the North American Company in those negotiations?

A. I know Mr. Black did represent them, but I can't say who, in addition to him. I presume there was a group.

Q. With reference to the acquisition of the securities of the Applicant by the Standard Gas & Electric Company in about 1927, wasn't it, do you recall that company having been requested to give a written assurance as to its participation in the affairs of the Applicant if the deal was consummated?

A. I can't recall that. I have forgotten even whether that was in Mr. Creed's administration or Mr. Hockenbeamer's.

Q. I believe it was during Mr. Creed's administration.

A. Mr. Creed died in 1927, somewhere around in there, I believe.

Mr. Phleger: That was just before his death.

By Miss Calkin:

Q. You don't recall what assurances the Standard Gas & Electric Company gave in regard to——

(Testimony of John D. McKee.)

A. (interposing) I don't remember anything about that. [628]

Q. Do you recall what agreement was entered into between the Applicant and the Standard Gas & Electric Company, if any, regarding the disposition by the Standard Gas & Electric Company of the securities of the Applicant? A. No.

Q. But the future participation of the North American Company, in the event the Western Power Corporation acquired a substantial block of the common stock of the Applicant, was a matter of discussion at the time these negotiations were carried on?

A. Yes. That, of course, was a very much larger issue of stock than any previous occasion and Mr. Hockenbeamer, of his own initiative, I would say, assured the Board, or advised the Board that while this was a large block of stock going out in one ownership that he felt that there was no risk or danger at all of its being used to the disadvantage of the Pacific Gas and Electric Company or that there would be any problem in the future.

Q. Did the Board request Mr. Hockenbeamer to get an expression of opinion on that subject from the representatives of the North American Company?

A. I think not; not that I know of. I would think not.

Q. Just what did Mr. Hockenbeamer tell the Board that you now can recall regarding any assur-

(Testimony of John D. McKee.)

ance, or any representation that the North American people made at that time? [629]

A. He said that in his judgment there would be no risk in giving out in one holding, to one holder, this large amount of stock; that there would be no effort made to dominate or control the actions of the Pacific Gas and Electric Company from this long distance from the east.

Q. And you, as a member of the Board, took that into consideration in voting for the acquisition of the securities of the Western Power Corporation subsidiaries?

A. Yes. That helped to satisfy me that it was a safe and desirable thing to do.

Q. Did you feel apprehensive that North American might attempt to dominiate the affairs of the Applicant upon its acquisition of a large block of its stock?

A. No. I never was apprehensive about it. I assumed it would not take place, but I was very glad to hear the statement that Mr. Hockenbeamer made.

Q. Now, Mr. Black made no representations to the Board in connection with that matter at that time?

A. No. He never appeared before the Board to my knowledge, and I know of no communication that he sent to that effect.

Q. You had no discussions with any other representatives of the North American Company on the question of the acquisition of these securities?

(Testimony of John D. McKee.)

A. No. [630]

Q. What arrangements, if any, were made at the time the negotiations were being carried on in regard to North American's representation upon Applicant's Board in the event the deal was consummated?

A. Mr. Hockenbeamer advised the Board, as I recollect it, that North American would be entitled to representation on the Board, either of two or three members.

Q. What about the Executive Committee?

A. And a member on the Executive Committee.

Q. Do you recall who North American's representatives on the Applicant's Board were?

A. Let me see—there was Mr. Dame and Mr. Gruhl who were the first ones. And I think there was Mr. Freeman and Mr. Fogarty. Who is the other one?

Q. Mr. Black was one of the first directors, was he not?

A. Yes. Mr. Black came on the Pacific Gas Board in 1930.

Q. And Mr. Earl?

A. No. Mr. Earl, I think, represented the Standard Gas interests.

Q. You never considered Mr. Earl a representative of the North American Company?

A. No. I think he represented the—wait a minute.

Q. Was Mr. O'Brien on your Board at that time? [631]

(Testimony of John D. McKee.)

A. Mr. Earl was on the Great Western——

Q. (interposing) Mr. John J. O'Brien was the representative of the Standard Gas & Electric Company, wasn't he?

A. Yes. Mr. Earl was Vice-President of the Great Western, I think it was the Great Western, and came on the Board as the representative of that interest.

Q. And he also represented that same interest on the Executive Committee? A. Yes.

Q. How many representatives does North American now have on your Board?

A. I think they have two members, Mr. Fogarty and—what is the name of the other one?

Q. Mr. Freeman?

Mr. Phleger: Mr. Freeman.

A. (continuing) Freeman, there were five of them, Dame, Gruhl, Fogarty—and who was the other one?

Mr. Phleger: Doolittle?

The Witness: Doolittle; yes, sir.

Mr. Bosley: Those were New York people who were members of the Applicant's Board at different times.

The Witness: I think the present directors are Fogarty and Freeman.

By Miss Calkin:

Q. But at one time, and prior to Mr. Earl's death, the [632] North American Company, I believe evidence shows, had three representatives on

(Testimony of John D. McKee.)

the Board, Mr. Earl, Mr. Black remaining on most of the period, and Mr. Dame and Mr. Gruhl and Mr. Doolittle serving at different times, along with Mr. Black and Mr. Earl? A. Yes.

Q Do you know why the North American now has only two representatives on the Board, whereas under the agreement entered into between the company and Mr. Hockenbeamer it was entitled to three members?

A. No. As a matter of fact, we see those gentlemen so seldom that they are almost myths. Whether they have a representative or not never really made any great impression on me.

Q. Do you recall any discussion which occurred just prior to the time of Mr. Palmer's selection on the Board to the effect that North American would not designate a third member so as to leave a vacancy which could be filled by Mr. Palmer's election? A. No.

Q. Mr. Palmer is not considered a North American Representative?

A. No. He is a Californian. He is a large stockholder and a very able man experienced in construction lines, and so forth, and a very good man for the company. I think he was [633] selected because he would be an asset to the company.

Q. You never heard any discussion to the effect that prior to his selection North American was requested not to put a third member on the Board?

A. No, I didn't hear that.

(Testimony of John D. McKee.)

Q. Has anyone representing the North American Company ever told you that its representation on the Board was not as important with Mr. Black as president as it was during Mr. Hockenbeamer's lifetime?

A. I never had any conversation with any representative of the North American Company?

The Examiner: Did you hear anyone else make such a statement?

The Witness: No one ever made such a statement to me.

By Miss Calkin:

Q. Do you consider Mr. Black as representing North American on the Applicant's Board at the present time? A. I do not.

Q. What do you know about the selection of the proxies for the annual stockholders' meeting of the Applicant?

A. I think, as it is quite customary, as a matter of routine with all California corporations, they name a committee of two or three of the directors or officers to act as a proxy.

Q. Who names that Committee?

A. I think the matter is referred to the Board for [634] approval before the notices are sent out. I think the proxy notice, and the form of the proxy is presented at a meeting of the Board, and the Board acquiesces in it.

Q. Would it be fair to say that the president selects the names of the persons who act as proxies?

(Testimony of John D. McKee.)

A. He might say, "Let's send out the same form of proxy." But that he designates the personnel of the Proxy Committee without reference to anybody else, I would say "No".

Q. Do you know who makes up the slate of the directors to be voted for by the proxies?

A. I don't recall any annual meeting at which the former incumbent Board was not re-elected, was not nominated and re-elected.

Q. So that has never been a matter of much discussion?

A. No. The changes have taken place between annual meetings, I think entirely so.

Q. Does Mr. Black advise the Board as to who North American's nominees for directors for the ensuing year will be at the time the slate of directors to be voted for by the proxies is made up?

A. I think when Mr. Fogarty and Mr. Freeman were elected on the Board their names were suggested by Mr. Black as being appropriate; but when the proxies were being sent out and the annual meeting was held for the purpose of re-electing directors, I don't think that subject was mentioned at all because [635] we carried all the same names, fifteen persons.

Q. In other words, in the absence of advice by the North American Company as to any change it would want as its representatives, you assume Mr. Fogarty and Mr. Freeman would be included in the list?

(Testimony of John D. McKee.)

A. Yes. Those two names would be included at each annual meeting if there was no wish expressed to the contrary.

Q. Does Mr. Black ever advise the Board as to North American recommendations on a particular problem when he submits it to the Board for consideration?

A. I never heard any such recommendation.

Q. Would you say that he had never done so?

A. Not when I was present at a meeting. I have been to, as you know, most of them.

Q. Since you have been a director of the Applicant have you ever been advised from any source what North American's wishes were with respect to a particular matter, other than the dividend declaration which you testified about?

A. No, I have not.

Q. Does the Board ever ask Mr. Black whether he has conferred with North American's representatives and what its suggestions have been in regard to a particular problem?

A. I would say no.

Q. What weight would you give to a suggestion made by the North American Company, in view of the fact that that [636] company is its largest stockholder, if such a suggestion or recommendation should be made by North American?

A. I would have an open mind and would give whatever it was the best consideration I could.

Q. Would the recommendations of that company

(Testimony of John D. McKee.)

be entitled, in your opinion, to greater consideration than those recommendatons if made by any other stockholder, in view of the position of the North American Company in the utility field?

A. I would feel that I should consider them very seriously on the basis of merit.

Q. Did Mr. Hockenbeamer ever advise the Board of recommendations which he had received from the North American Company on problems pertaining to the Applicant?

A. No, not to my knowledge.

Q. Has there ever been any major difference of opinion between the Board and Mr. Black since he has been president of the Applicant? A. No.

Q. To your knowledge has the Board ever disapproved of matters submitted and urged by Mr. Black? A. No.

Q. Would you say that the relationship between the Board and Mr. Hockenbeamer was equally harmonious during Mr. Hockenbeamer's presidency?

A. It was. Mr. Hockenbeamer first appeared in the [637] company about 1906 or 1907, when the company was in great difficulties, and through his great ability of financing, and through his initiating the sale of preferred stock, he was largely instrumental in the subsequent prosperity of the company. The company owes him a great debt of appreciation, I always felt; and between him and the Board, as between Mr. Black and the Board,

(Testimony of John D. McKee.)

there was, I think, a relationship of not only admiration but very cordial friendship.

Q. Do you, as a director of the Applicant, feel free to act on any major problem which might come before the Board, without receiving North American's reaction to that particular problem?

A. I do.

Q. Have you, on your direct examination, testified as to everything that you know concerning Mr. Black's selection as president of the Applicant?

A. Everything that I have any direct knowledge of. I think that I heard Mr. Miller advise the Board, or a group of us, that after we had agreed that we would like to advise Mr. Black to come, that he would telephone or had telephoned to Mr. Fogarty to see if he could secure Mr. Black's release.

Q. Was Mr. Miller's conference with the New York people after the meeting in Mr. Elsey's office that you have testified about?

A. It followed that meeting; yes. [638]

Q. Followed that meeting? A. Yes.

Q. Was anyone else specifically considered for the presidency of the Applicant after Mr. Hockenbeamer's death?

A. Well, of course, there were members of the organization, and if it had been just a matter of seniority in the organization, or moving one man forward when another man dropped out, Mr. Downing would have been next in line and there might have been somebody next to him. So there was no

(Testimony of John D. McKee.)

escaping considering the name of Mr. Downing, who would have been an excellent man for the position, but I think the principal argument there was that we wouldn't be strengthening the company. We would have lost a good man and just closed up the ranks, instead of getting someone else. There was ample opportunity for the activity and abilities of both, and we figured we wanted to add something to take the place of Mr. Hockenbeamer, and not simply shorten the ranks and then be at that disadvantage.

Q. Those matters were discussed between you and Mr. Elsey and Mr. Miller?

A. Yes; discussed at these informal talks with Mr. Miller and at the meeting I speak of. I suppose other directors talked among themselves about it.

Q. Before the Board met on the occasion on which it selected Mr. Black as president, which I believe was November [639] 20, 1935, had all of the outside directors of the company, that is, those who were not officers of the company, were they pretty much in accord as to Mr. Black's selection?

A. Well, that would be Mr. McIntosh and Mr. Chickering. The only two not in this meeting were Mr. McIntosh and Mr. Chickering. As soon as they had a chance to discuss it with them they were in agreement. The other directors were in New York. I am speaking now of those outside of Mr. Downing, Mr. Foote and Mr. Coghlan.

Q. So all of the directors who were not em-

(Testimony of John D. McKee.)

ployees of the company were in accord prior to the meeting of the Board at which Mr. Black was selected?

A. Yes.

Q. Was it possible that Mr. Black, because of his past association with the North American Company and its subsidiaries, might be influenced and dominated by North American considered and discussed between the directors prior to his selection?

A. No, I think not. I think it is safe for me to say that at our little meeting we were interested only in getting the best man we could for the Pacific Gas, and what kind of service he could render to the Pacific Gas as an individual.

Q. Did you personally feel that if Mr. Black was made president of the company that such would result in a closer contact between the North American Company and the Pacific [640] Gas and Electric Company than had existed under Mr. Hockenbeamer's presidency?

A. You say a "closer contact"?

Q. Yes.

A. No. I assumed that he would just cut loose from the North American and affiliate himself with the Pacific Gas.

Q. Before Mr. Black was offered the position did you receive any assurances from him, directly or indirectly, as to what his future attitude toward North American recommendations might be?

A. No, I did not. In fact, I didn't meet him, or speak to him, or communicate with him.

(Testimony of John D. McKee.)

Q. I mean, Mr. Miller never advised you that he had taken up such a matter with Mr. Black?

A. No. Between the time Mr. Hockenbeamer died and Mr. Black's election, I had no communication with him, or with anybody else on his behalf, on that or any other subject.

Q. Do you think that it would be possible for North American to exert a very substantial influence over the Applicant's management and policies if such an influence were exerted by it over Mr. Black even though North American representatives never attended Board meetings, or had any other contacts with the other directors of the company?

A. No; I think they could not.

Q. Why do you make that answer?

A. Now, you are speaking of influence on the Board of [641] Directors, or the company as a——

Q. (interposing) I mean if North American exercised a very substantial influence over Mr. Black, could it by so doing substantially influence the policies and management of the Applicant?

A. Well, you asked me, I think, if the directors had overruled Mr. Black in any of his proposals, and also what the relations were between him and the Board. When I said that the Board had not overruled him to my knowledge, and the relations are cordial, with mutual respect and esteem, but at the same time I am sure that if Mr. Black proposed anything which the directors had any suspicion was not sincere or for the best interests of the company,

(Testimony of John D. McKee.)

or dominated by the North American, that he would find resistance, effective resistance. There would not be that happy family atmosphere that now prevails.

Q. Was the fact that the Board felt that North American should play a greater role in Applicant's activities one of the factors in your selecting, or the Board selecting Mr. Black as Mr. Hockenbeamer's successor?

A. Not in the slightest degree.

Q. And you did not consider such an inevitable occurrence if he were selected?

A. We did not.

Q. Have there been any major changes in the operating [642] or financial policies of the Applicant after Mr. Black's presidency?

A. I think practically none. You speak of "financial". A number of our bond issues have been funded and renewed at lower rates of interest, which was a good job made possible by the low interest rates now current.

Q. That was instituted under Mr. Hockenbeamer's presidency?

A. Yes. Mr. Hockenbeamer did something and Mr. Black did considerable more, but I think, as far as the policies and methods of administration and operations are concerned, we have the same people we had before and doing much the same kind of work.

Q. Do you have any particular feeling about the

(Testimony of John D. McKee.)

desirability of North American's interference with Applicant's management or policies?

A. I think it would be very unfortunate if they either did or tried to.

Q. Why do you believe it would be unfortunate?

A. Well, this is a California company, with a large number of stockholders on the Pacific Coast, in which they take pride. I think the Board of Directors as a group of independent gentlemen would resent any such attempt and it would just make for friction and lack of harmony.

Q. Do you know whether or not North American represen- [643] tatives have *made* played any part in the determination of the Applicant's policy in regard to the Hetch Hetchy situation?

A. No, I would say not.

Q. I didn't get your answer.

A. You asked if the North American played any part in the policies followed by the Pacific Gas with respect to the Hetch Hetchy question and I would say "no".

Q. Other than the instance that you have already testified about, to what extent has North American participated in the dividend policy of the Applicant?

A. I never heard of any.

Q. Do you know whether or not their representatives were advised concerning the increase from 6 percent to 8 percent dividend rate in 1936?

(Testimony of John D. McKee.)

A. No. I think the dividend was reduced in 1933 because the earnings had shown a downward trend, and the Board was anxious about it; and in 1936, three years later, when there was an improvement in earnings, it was possible to restore the 8 percent, and that was done.

Q. Who recommended the increase at that time?

A. Let me see—Mr. Hockenbeamer was president then. He must have recommended that, or the Executive Committee.

Q. If a reduction or increase in the present dividend rate on the common stock were suggested, would you request North American's opinion on the advisability of such action [644] before it was taken by the Board? A. I would not.

Q. What matters, if any, do you feel that North American, as Applicant's largest stockholder, should be consulted in regard to before final action was taken by the Board? A. None.

Q. Who selected the syndicate manager of the underwriting syndicates formed in connection with the Applicant's financing prior to 1931?

A. What?

Q. Prior to 1931 who selected the manager of the underwriting syndicates formed in connection with the Applicant's financing?

A. In 1931—that must have been Mr. Hockenbeamer.

Q. I believe the evidence shows that the National City Company headed most all of the Ap-

(Testimony of John D. McKee.)

plicant's financing from about 1917 until it went out of business sometime in 1932 or 1933?

Mr. Phleger: May I suggest, in connection with that—you have asked that question two or three times—and I refer you to the exhibit which shows the underwritings and call your attention to the fact that between July 1919 and July 1920 Blyth, Witter & Co. headed four underwritings.

Miss Calkin: The question should be corrected to read from 1919 on. [645]

Mr. Phleger: Yes—1921 on.

A. Blyth, Witter & Co. I think the National City Company was quite helpful. When George Weeks was here——

By Miss Calkin:

Q. (interposing) That was prior to 1920, wasn't it? A. Yes.

Q. From 1921 on until the National City Company went out of the investment banking business headed all of the syndicates formed in connection with the Applicant's financing?

A. As far as I know financial negotiations were carried on between the brokers' house on the one hand, or the banking house on the one hand, and the president of the company on the other. It was that way during Mr. Creed's lifetime and also with Mr. Hockenbeamer, and with Mr. Black since he became president.

Q. So the Board didn't take a very active part

(Testimony of John D. McKee.)

in connection with the selection of the syndicate manager?

A. No; no part in the direct negotiations, or in suggesting any manager, but approved the program as recommended by the president, which would have the endorsement of the executive committee.

Q. And it had always been customary for the president of the company to handle such matters?

A. Of course, those negotiations are not things that can be done by a large group on each side. Conditions change, [646] market conditions change, and it takes some little finesse in handling such matters, because it may make or lose money for the company. The aim is to get the best price for the securities you possibly can.

Q. But those negotiations in an effort to get the highest price possible for the company were carried on by Mr. Hockenbeamer during his presidency?

A. Yes. First, by Mr. Drum, then by Mr. Creed and then by Mr. Hockenbeamer, and now by Mr. Black.

Q. The first financing done by the Applicant after the National City Company went out of the investment banking business was in March 1935 when the Applicant sold a $45,000,000 bond issue. Do you recall who headed the syndicate?

A. No. I could ascertain it if it is necessary.

Q. Are you acquainted with the banking firm of Lazard Freres & Co.? A. Yes.

(Testimony of John D. McKee.)

Q. And do you know how Lazard Freres & Co. got the management of the syndicate which purchased that issue? A. No, I do not.

Q. Do you know who selected Lazard Freres & Co. as syndicate manager? A. No.

Q. Did you have anything to do with the selection of either Lazard Freres & Co. as syndicate manager, or with the [647] selection of any of the members of that syndicate? A. No.

Q. Do you know whether Mr. Hockenbeamer—

A. (interposing) That was the time when we had to file the first long statement, and so forth—was it March 1935?

Q. Yes. I think that was the first issue that you registered under the Securities Act.

A. It is not pleasant to recollect, but I was in the hospital at that time. I didn't get out of Dante's Hospital until about April, I think. I remember I read over that document carefully when lying on my back in the hospital.

Q. No one ever approached you in an effort to get the leadership of that business? A. No.

Q. Do you know whether or not Mr. Hockenbeamer had any contacts with North American people regarding that piece of financing?

A. I do not.

Q. Do you know Mr. Blyth, Charlie Blyth?

A. Very well.

Q. How long have you known him?

A. Since 1915.

(Testimony of John D. McKee.)

Q. Did Mr. Blyth ever approach you in an effort to get you to use your influence on the Applicant's Board to get [648] the leadership of Applicant's business for his firm?

A. I think not. He had asked me to do a great many things from time to time—such as the Community Chest and upon various funds—and he might have, I think he would have assumed that if I was a director of the Pacific Gas and his name was being considered as a desirable underwriter, and he needed any endorsement, I suppose he would assume that I would favor him, other things being equal.

Q. If Mr. Hockenbeamer had asked you for your opinion as to who should head the Pacific Gas business during 1935 would you have recommended the Lazard Freres & Co.?

A. No, I wouldn't have initiated them, thought of them in this connection particularly. If he had asked me, do I know the firm and do I think it is high class, and can they do the job right, I would have said "I think they can." But I wouldn't have thought of them out of my own mind.

Q. But you wouldn't have selected them if it had been left up to you to make the initial selection?

A. No. I wouldn't have thought of them particularly because my financial business relationships or friendships were along other lines.

Q. Now, after Mr. Black became president the first issue of the Applicant was put out in March,

(Testimony of John D. McKee.)

1936, which was a $90,000,000 bond issue. Do you recall who headed the syndicate that purchased that issue? [649] A. I do not.

Q. The evidence, I believe, shows that Blyth & Co. headed that piece of business and has headed all of the public financing of Applicant since that date. Mr. McKee, what, if anything, do you know about how Blyth & Co. got the leadership of the Applicant's business in 1936?

A. I suppose Mr. Blyth went to see Mr. Black and made him an offer to buy the securities.

Q. But Mr. Blyth never approached you during that period and asked for your support in getting that business? A. No, he did not.

Q. And in your opinion is Mr. Black the person responsible for Blyth & Co.'s selection as syndicate manager of the business in 1936?

A. I would say that if Mr. Black reported to the Board that he wanted to make a financial deal, and would like to have it handled by Mr. Blyth and his associates, that the Board would approve it.

If Mr. Black had said, "Mr. Blyth wants the job but I am opposed to it, and he can't have it," we wouldn't force Mr. Blyth over his head.

So in that respect Mr. Black might be responsible for it.

Q. In your opinion did Mr. Blyth have more friends on Applicant's Board than any representa-

(Testimony of John D. McKee.)

tive of the firm of Lazard Freres & Co. had at that time? [650]

A. I think that is quite true.

Q. You had had a business, as well as a personal friendship with Mr. Blyth over a period of years?

A. Yes. Mr. Blyth and Mr. Witter were young men in the firm of Louis Sloss & Co., a brokerage banking firm, which got into difficulties in 1915. I was one of the committee that took hold of their affairs to straighten them out. These two men were left helpless, as it were, and they went in business with limited capital. I loaned Dean Witter $10,000 to start him, and Charlie Blyth got a little money, and from that they each became millionaires. It shows they are pretty good men. That was my experience with them.

Q. You never had any conversations with any representatives of the North American Company during 1936 concerning the financing of the Applicant? A. No.

Q. Do you know anything about how Dillon Read & Co. got a participation in the March 1936 $90,000,000 issue of bonds?

A. No. I presume that would be a matter of syndicate management to take them in. I don't know that the company controlled that. I don't know whether it did or not.

Q. You don't know whether they were invited in at the request of the North American Company?

A. No, I don't. [651]

(Testimony of John D. McKee.)

Q. Do you consider Blyth & Co. a California house as distinguished from a New York house?

A. I do.

Q. Is Blyth & Co. one of the largest underwriting houses on the Coast? A. It is.

Q. In your opinion was the selection of Blyth & Co. more agreeable to all members of the Board than the selection of Lazard Freres & Co.?

A. I think it should be said that all the Board wanted was some concern that could do the job right, that could pay the best price to the company for the securities and distribute them in the most effective way; that is, put them where they wouldn't be coming on the market too soon, put them away among real investors, I would say.

Now, from my acquaintance with Charlie Blyth, and because he is a Californian, my preference or my prejudice, I might say, would be that I would think he would be the best man for that.

I might be mistaken. Maybe Lazard Freres & Co. was a better house to do that job.

Q. Did you ever hear anyone express any criticism of the manner in which Lazard Freres & Co. had handled the Applicant's business?

A. I never did; no. I think the market-wise position of the securities now is testimony of the fact that they were well [652] placed.

Q. Do you know whether or not any representatives of Blyth & Company contacted any of the representatives of the North American Company in an effort to get Applicant's financing?

(Testimony of John D. McKee.)

A. I never heard of it.

Miss Calkin: That is all.

Mr. Phleger: That is all.

The Examiner: You may be excused.

(Witness excused.)

Mr. Phleger: I will call Mr. Crocker.

Whereupon——

W. W. CROCKER

was produced as a witness for and on behalf of the Applicanct, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Mr. Crocker, will you give your name and address to the reporter for the record?

A. W. W. Crocker; 1 Montgomery Street.

Q. How long have you lived in California, Mr. Crocker?

A. 47 years and a couple of months.

Q. You were born in this state? A. Yes.

Q. When did your family first come to California? [653] A. In the spring of 1850.

Q. Has your father and grandfather lived here ever since? A. Yes.

Q. What is your occupation? A. Banking.

Q. And what position do you hold in banking?

(Testimony of W. W. Crocker.)

A. I am president of the Crocker First National Bank.

Q. What other corporations are you connected with as an officer or director?

A. Well, the Pacific Gas and Electric Company, the Matson Navigation Company, the Metropolitan Life Insurance Company, the Pacific Lighting Company, the Santa Cruz Cement Company, Gladding McBean & Co.——

Q. (interposing) Suppse I read a few?

A. Yes.

Q. Are you an officer of the Crocker Estate Company? A. Yes; president.

Q. President and director? A. Yes.

Q. Crocker-Huffman Land & Improvement Company? A. President and director.

Q. Crocker Investment Company?

A. President and director. [654]

Q. Pacific Improvement Company?

A. President and director.

Q. Provident Securities Company?

A. President and director.

Q. Bunker Hill and Sullivan Mining and Concentrating Company? A. Director.

Q. California Pacific Title and Trust Company?

A. Director.

Q. Del Monte Properties Company?

A. Director.

Q. Firemen's Fund Insurance Company?

A. Director.

(Testimony of W. W. Crocker.)

Q. Hobart Estate Company? A. Director.

Q. Do you personally and through your corporations in which you own stock, own substantial stockholdings in all of the corporations you have mentioned with the exception of the Metropolitan Life Insurance Company?

A. Do I what?

Q. Do you personally, or through corporations in which you are a stockholder, own substantial holdings in all of the corporations I have mentioned, with the exception of the Metropolitan Life Insurance Company? A. Yes. [655]

Q. With the exception of the Metropolitan Life Insurance Company all of those companies that you have mentioned might properly be described as western corporations, are they not?

A. They all are; yes.

Q. And is it fair to say that your interests are almost exclusively confined to the west and particularly to California?

A. I think that is an accurate statement.

Q. Mr. Crocker, I refer you to Exhibit 32, which has been introduced in evidence, and I will ask, by reference to it, you to state the number of shares of stock of Pacific Gas and Electric Company owned by you directly or by corporations in which you are affiliated?

A. I own personally 632 shares of common; the Provident Securities Company owns 10,720 preferred and 10,438 common; the Crocker Investment

(Testimony of W. W. Crocker.)

Company owns 7,737 common; and then the Crocker First National Bank has 61,383 preferred and 20,659 common—making a total of *11,569*.

Q. Now, you are a substantial stockholder, are you not, of the Provident Securities Company?

A. Yes.

Q. The shares which you have stated are owned by the Crocker First National Bank of San Francisco are owned by it in a representative capacity, are they not? [656] A. Fiduciary; yes.

Q. Of the shares of stock which you yourself own, and which are owned by corporations with which you are affiliated, been held for some considerable period in the Pacific Gas and Electric Company?

A. I think most of them for a great many years; yes.

Q. Have you ever been a seller of Pacific Gas and Electric stock? A. Never.

Q. You have been a buyer, have you not?

A. I have been consistently a buyer.

Q. By the way, Mr. Crocker, do any of these corporations own any shares in the North American Company?

A. Either the Provident Securities Company or the Crocker Investment Company owns stock.

Q. Do you know how many shares?

A. I would have to look that up.

Q. To refresh your recollection, is it 8,000?

A. 8,000; yes.

(Testimony of W. W. Crocker.)

Miss Calkin: Common of North American?

The Witness: Common.

By Mr. Phleger:

Q. That is spread between two corporations, is it not, that is, owned by two corporations? [657]

A. The Crocker Investment Company and the Provident Securities Company are so identical that I think it is spread between the two of them.

Q. When did you become a director of the Pacific Gas and Electric Company?

A. The exact date—three years ago.

Q. October 6, 1937? A. Yes.

Q. It was shortly after your father's death, was it not? A. Yes.

Q. Do you know how long your father had been a director of Pacific Gas and Electric Company?

A. I don't recollect.

Q. For many years?

A. A great many years; yes.

Q. Did he frequently discuss his affairs with you in a general way? A. Yes.

Q. That is, during his lifetime? A. Yes.

Q. Do you know whether he was connected with any of the companies which subsequently became part of the Pacific Gas and Electric Company system? A. Yes. [658]

He practically started the Standard Gas & Electric Company, I think that is the name.

Mr. Bosley: Standard Electric Company of California.

(Testimony of W. W. Crocker.)

The Witness: Yes—in 1899, wasn't it?

Mr. Bosley: 1898 or 1899.

By Mr. Phleger:

Q. He and his associates were large holders of securities of that company, were they not?

A. They were.

Q. And when that company was consolidated with, or its properties were transferred to the Pacific Gas and Electric Company, he became in turn a large holder of securities of the Pacific Gas and Electric Company, did he not? A. Correct.

Q. How long have you known Mr. C. O. G. Miller? A. 20 years.

Q. How long have you known Mr. John McKee?

A. 20 years. I just said that because I came back from the war then.

Q. How long have you known Norman Livermore? A. Same number of years.

Q. How long have you known Mr. Chickering?

A. Same number of years.

Q. How long have you known Mr. Downing?

A. Same time. [659]

Q. How long have you known Mr. McIntosh?

A. Same number of years.

Q. How long have you known Silas Palmer?

A. The same.

Q. And Henry D. Nichols? A. The same.

Q. How long have you known Mr. Black?

A. I would say, when he was president of the Great Western Power. Would that be about 15

(Testimony of W. W. Crocker.)

years?

Q. He went East in 1927. So it would have to be before that date, would it not? A. Yes.

Q. And you have seen considerable of him in recent years? A. A great deal.

Q. Who was it that invited you to became a director of the Pacific Gas and Electric Company?

A. Jim Black.

Q. Did you know Mr. Edwin Gruhl during his lifetime? A. No.

Q. Did you know Mr. Dame during his lifetime?

A. No.

Q. Did you know Mr. Doolittle? A. No.

Q. Did you know Mr. Freeman? [660]

A. No.

Q. Do you know Mr. Fogarty? A. Yes.

Q. How long have you known Mr. Fogarty?

A. I would say three or four years. He came out to the Bohemian Grove about four years ago and that was the first time that I met him.

Q. And you met him only in the Grove?

A. Only in the Grove; yes.

Q. Have you ever discussed Pacific Gas and Electric Company affairs with him?

A. Never. [661]

Q. Have you ever been requested by Mr. Fogarty or anyone in the North American Company to vote in any particular way or to take any particular action as a director of the Pacific Gas and Electric Company? A. No.

(Testimony of W. W. Crocker.)

Q. Have you ever heard the name of the North American Company mentioned in any directors meeting of the Pacific Gas and Electric Company other than in connection with this proceeding?

A. Never heard it mentioned until it was announced that this proceeding was about to take place.

Q. As a director of the Pacific Gas and Electric Company have you always felt perfectly free to exercise your own judgment? A. Absolutely.

Q. Has anyone ever attempted to control your judgment as a director of the Pacific Gas and Electric Company? A. No.

Q. Have you ever at any time or in any connection observed anything indicating that the Pacific Gas and Electric Company is controlled directly or indirectly by the North American Company or that the management or policies of the Pacific Gas and Electric Company are subject to a controlling influence directly or indirectly by the North [662] American Company? A. No, never.

Q. If the North American Company attempted to control or influence directly or indirectly the management or policies of the Pacific Gas and Electric Company would you oppose such attempt?

A. Most certainly.

Q. Do you think that the other directors of the Pacific Gas and Electric Company, with the exception of Mr. Fogarty and Mr. Freeman, would also oppose such attempt?

(Testimony of W. W. Crocker.)

A. Undoubtedly, I think so, yes.

Q. In the event that the North American Company were to attempt to control or influence the management or policies of the Pacific Gas and Electric Company, do you think it would be able to do so? A. I do not.

Q. If the North American Company attempted to secure sufficient proxies to obtain a majority of the representation at a stockholders' meeting and such an attempt were resisted by the management and directors of the Pacific Gas and Electric Company, do you think that the North American Company would be successful in its attempt?

A. No, I do not think so, no.

Q. Why? [663]

A. Because I think it's been proven over a period of years that California corporations are best run in California and that the stockholders would react to that logic, that point of view.

Q. You feel——

A. (continuing) Southern Pacific was bossed in New York for years and years and years; they just come to the conclusion that the only place to run the Southern Pacific is from San Francisco.

Q. Do you——

A. (continuing) ——And the same thing would apply logically to the stockholders.

Q. Mr. Crocker, do you think you would have any difficulty convincing the stockholders of the Pacific Gas and Electric Company in the event the

(Testimony of W. W. Crocker.)

North American Company were attempting to secure their proxies that the P. G & E., and the interests of its stockholders would be better served by California management than by North American management?

A. To me it would be a cinch, to persuade them to that effect.

Mr. Phleger: That is all.

The Examiner: Any cross examination, Miss Calkin?

Mr. Phleger: Do you want to take the recess now?

The Examiner: Oh, yes; perhaps we ought to have a recess for five or ten minutes. [664]

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

The Examiner: Will you resume the stand, Mr. Crocker. You had completed your direct examination, I believe?

Mr. Phleger: Yes.

Cross Examination

By Miss Calkin:

Q. Mr. Crocker, why would you oppose any attempt on the part of the North American Company to dominate or control the policies of the Applicant?

A. Because it would not be to the best interests of the stockholders.

(Testimony of W. W. Crocker.)

Q. Do you personally or the companies which you are closely associated with have any substantial investment in any of the subsidiaries of the North American Company as distinguished from the North American Company itself? A. No.

Q. Were you ever associated with the Western Power Corporation or any of its subsidiaries?

A. No.

Q. As a director of the company what contacts, if any, do you have with the Vallejo Electric Light and Power Company? A. With the what?

Q. Vallejo Electric Light & Power Company; that is [665] a light and power company operating in which the Applicant has approximately 45 per cent ownership?

A. I don't know anything about it.

Q. Have you ever—do you recall the Board of the Applicant ever having discussed the operating problems of the Vallejo Light & Power Company?

A. I don't recollect that.

Q. Do you know who determines the policies of that company?

A. I do not know. That is the Vallejo——

Q. You had nothing to do with the negotiations which culminated in Applicant's acquisition of the Western Power Corporation's subsidiaries?

A. I do not.

Q. In other words, you played no part in Applicant's affairs until your directorship in 1937. Is that correct? A. Yes.

(Testimony of W. W. Crocker.)

Q. Did you ever hear—scratch that.

Did your father or anyone else ever tell you how Mr. Black was selected as president of the Applicant?

A. I—my best recollection, I remember my father telling him that C. O. G. Miller had discussed the matter with him and they hoped they would get him Black to be president; then the next thing was I heard that he was president. [666]

Q. It was your understanding that Mr. Miller originally suggested Mr. Black for the presidency of the Applicant?

A. No, I don't mean that. All I remember is that Mr. Miller and my father had a discussion and they told me the results of it.

Q. I believe you testified that you and Mr. Fogarty had never discussed any of the—any phases of the Applicant's business at any time?

A. I don't remember of discussing—I don't think any business—with Jim Fogarty.

Q. Have you ever talked to Mr. Fogarty in his office in New York? A. Never been there.

Q. The only times you have seen Mr. Fogarty was on occasions of his visits to California?

A. I think I have seen him maybe once or twice in New York casually at a club or something.

Q. Do you know who selects the proxies for annual stockholders meetings of the Applicant?

A. Who does what?

Q. Selects the proxies, the members of the Proxy

(Testimony of W. W. Crocker.)

Committee, for the annual stockholders meetings?

A. No; Executive Committee—I don't know.

Q. Do you know who makes up the slate of directors which are named in the proxy statements circulated to [667] stockholders in the Securities and—under the regulations of the Securities and Exchange Commission? A. Who does what?

Q. Prior to the annual stockholders meetings, under the present rules of the Securities and Exchange Commission, a proxy statement is made up which sets forth the names of the directors which the proxies will vote for, and my question is: Do you know who makes up the slate of directors which will be included in that proxy statement?

A. I think it is drawn up by the Executive Committee, and I think it is submitted to the directors for their approval.

Q. What directors, in your opinion, are most active in the affairs of the Applicant at the present time?

A. Mr. Wishon, Mr. Chickering and Mr. Livermore—the Executive Committee?—Mr. C. O. G. Miller, by all means.

Q. Have you ever heard Mr. Black advise the Board at a meeting attended by you as to recommendations which he received from the North American Company in regard to any of the Applicant's problems?

A. I had never heard the North American Com-

(Testimony of W. W. Crocker.)

pany's name mentioned in a directors meeting until this proceeding was brought up.

Q. You don't know to what extent, if any, Mr. Black communicates with the North American Company regarding the [668] Applicant's problems?

A. I wouldn't know.

Q. Has the Board ever disapproved a matter submitted to you by Mr. Black or recommended by him? A. Not that I know of.

Q. Has the relationship between the Board and Mr. Black during your directorship been at all times harmonious?

A. I would say very much so.

Q. Do you know anything about who selected Blyth & Company to head the Applicant's 1936 financing? A. No, I do not.

Q. And the Applicant has had no substantial bond issues since you have been a director of the company? A. No, they had been refinancing.

Q. I believe the record shows the only bonds issued by the Applicant since the time you became director were issued in February of 1938?

A. Yes.

Q. And consisted of a private sale of fifteen million dollars worth of bonds? A. Yes.

Q. Do you know who it was that determined that that issue would be sold privately rather than publicly? A. I think it was cheaper.

Q. Was that type of financing recommended by Mr. [669] Black?

(Testimony of W. W. Crocker.)

A. I don't remember exactly. There was a little discussion about it and we decided to do it that way because it was cheaper.

Q. Generally speaking does the president of the Applicant formulate his financial policy as distinguished from other officers of the company?

A. I would say that the president consults his Executive Committee and they reach a conclusion as to how to do their financing, then he voices the result to the full Board.

Miss Calkin: I think that is all.

The Examiner: Any redirect?

Redirect Examination

By Mr. Phleger:

Q. Mr. Crocker, you are a director of the Metropolitan Life Insurance Company, I believe.

A. Yes.

Q. Do you know whether it is a large holder of bonds of the Pacific Gas and Electric Company?

A. Yes, I think they are very large holders. I don't know the exact amount.

Q. Twenty million dollars worth?

A. You might as well mention any number; their portfolio runs in astronomical figures. [670]

Mr. Phleger: That is all.

The Examiner: You may be excused. Thank you, Mr. Crocker.

Mr. Phleger: Mr. Chickering.

Whereupon

ALLEN L. CHICKERING

was produced as a witness for and on behalf of the Applicant, and having been first duly sworn, was examined and testified as follows?

Direct Examination

By Mr. Phleger:

Q. Mr. Chickering, will you give your name and residence address?

A. Allen L. Chickering, A-l-l-e-n; and residence, 11 Sierra Avenue, Piedmont.

Q. How long have you resided in California?

A. Since I was born, which is 63 years.

Q. When did your family first come to California? A. 1875.

Q. What is your profession?

A. I am an attorney at law.

Q. Have you always practiced in San Francisco? A. Yes sir.

Q. Mr. Chickering, I show you Applicant's Exhibit 32. Will you state, with your recollection refreshed by [671] examining it, the number of shares which you own personally in the Applicant, and then the number of shares which are held by other members of your family by associated interests?

A. Well, I have 1800 shares, a thousand common and 800 preferred; and then my family have the following: My son, as trustee for his daughter,

(Testimony of Allen L. Chickering.)

Caroline, 20 shares of preferred, and as trustee for another daughter, Joan, 16 shares of preferred; my son, Allen L. Chickering, Junior, has 220 shares of preferred and 200 shares of common; my wife, Alma S. Chickering has 1280 shares of preferred and 300 shares of common; my daughter-in-law, Carline R. Chickering, has 50 shares of common; my sister, Martha, 320 shares of preferred; my son, Sherman, 100 shares of preferred, and 40 shares of common; my sister-in-law, Theo Par Chickering, 280 shares of preferred and 16 shares of common, and as trustee 20 shares of preferred. My son, William H. Chickering, has 300 shares of preferred and 100 shares of common; my daughter, Mary C. Erdman, has 700 shares of preferred and 500 shares of common; and the Crocker First National Bank as trustee under my mother's will, in which trust I am the—one of the ultimate beneficiaries, has 225 shares of preferred and as trustee for my niece, in which I have no direct interest, 45 shares of preferred; or a total of 6,432 shares.

Q. Have you been a holder of stock of Pacific Gas [672] and Electric Company over a considerable period?

A. Yes sir, I have been gradually increasing my holdings. I bought 300 shares of common last year, but I have had stock for many years.

Q. When did you first become a director of the Pacific Gas and Electric Company?

A. In 1927.

(Testimony of Allen L. Chickering.)

Q. Who first talked with you about becoming a director?

A. Well, I am not sure, but I think it was Mr. Creed who was at that time the president of the P. G. & E.; but it might have been Mr. John O'Brien, who was president of Standard Gas and Electric Company. I had been vice-president and a director of the so-called Byllesby Companies which were sold to the P. G. & E. in 1927 and following the consolidation I became a director of the P. G. & E.

Q. Mr. Chickering, what corporations are you a director or officer of?

A. Well, I am a director—member of the Executive Committee of the Southern Pacific, Pacific Telephone & Telegraph Company; I am vice-president and director of the San Diego Gas and Electric; I am director of the Caterpillar Tractor Company and a number of smaller companies. I can give them if you would like to have them.

Q. I think that is all. [673]

A. (continuing) Riverside Cement Company; Smith Lithograph Company.

Q. Is it fair to state that all of these corporations have their principal interests in the west?

A. It is, except to a limited extent, the Caterpillar Tractor Company, where the manufacturing center of operations is Peoria, Illinois; but the corporate headquarters is here.

(Testimony of Allen L. Chickering.)

Q. And to the Easterners Illinois is west anyhow; isn't it? A. (pause)

Q. Have you any close connections with any eastern corporations or concerns? By that I mean concerns whose principal interest is along the Atlantic Seaboard? A. None whatever.

Q. How long have you known Mr. Foote?

A. You mean the secretary of the Pacific Gas and Electric Company?

Q. Yes, D. H. Foote.

A. Oh, at least 25 years.

Q. How long have you known Mr. C. O. G. Miller?

A. Well, almost since I was a boy, but I remember knowing him well as far back as 1910.

Q. How long have you known Mr. John D. McKee? [674] A. Oh, 35, 40 years.

Q. How long have you known Norman Livermore? A. Probably the same.

Q. How long have you known Mr. Downing?

A. I have only known him about 25 or 30 years.

Q. How long have you known Mr. Coghlan?

A. Well, I tried a case with him about 38 years ago. I think that is the first time I met him.

Q. How long have you known Mr. McIntosh?

A. Over 30 years.

Q. How long have you known Mr. Wishon?

A. 25 years, almost exactly.

Q. How long have you known Mr. Silas Palmer?

A. Well, I was quail shooting with him in 1897. I think I have known him about 50 years.

(Testimony of Allen L. Chickering.)

Q. How long have you known Mr. William W. Crocker? A. About 20 years.

Q. How long have you known Mr. Henry Nichols? A. 50 years.

Q. When did you first become a member of the Executive Committee of the Pacific Gas and Electric Company?

A. When John Drum left; for a guess, I would say it was 1929. I haven't looked it up.

Q. January 16, 1930 would that be about right?

A. I should say that would be; I knew it was 29 or [675] the early part of 30.

Q. Have you attended the meetings of the Board of Directors and of the Executive Committee with regularity?

A. Yes sir, I have very regularly, except when I have been out of town, as I have been occasionally.

Q. You take an active interest in the affairs of the corporation? A. Very much so.

Q. Are matters that come before the Board of Directors and before the Executive Committee of the company fully and freely discussed?

A. Yes sir, very thoroughly discussed and even if they have been discussed in the Executive meetings they are reported in the Board of Directors.

Q. In your opinion does any one director dominate the meetings of the Board or Executive Committee? A. No sir.

Q. At meetings of the Board or Executive Committee have you ever hesitated in freely expressing your views upon any subjects brought before it?

(Testimony of Allen L. Chickering.)

A. Decidedly not.

Q. Were you acquainted with Mr. Frank Dame during his lifetime? A. Met him once.

Q. Did you know Mr. Edwin Gruhl during his lifetime? [676]

A. I think I saw—met him twice. I think he was at a directors meeting out here once, and I think I saw him when I called on Mr. Black in New York once, may have seen him another time, but I don't remember.

Q. Are you acquainted with Mr. F. W. Doolittle?

A. Well, I have been introduced to him; I wouldn't know him if I saw him.

Q. Do you know Mr. James S. Fogarty?

A. Yes, I have seen him, I think, three times in my life.

Q. Do you know——

A. (continuing)—Once at a meeting here and twice in the North American office in New York.

Q. Do you know Mr. Herbert C. Freeman

A. Just met him.

Q. Now, have you ever at any time discussed with any of the gentlemen that I have just named the affairs of the Pacific Gas and Electric Company other than at a directors meeting that they may have attended.

A. Well, when I was in New York, while Mr. Black was connected with the North American Company I used to call on Mr. Black whenever I

(Testimony of Allen L. Chickering.)

had time because he and I were very warm friends socially and I may—when he introduced me to these other gentlemen I may have told him—told them what was going on in the P.G.& E., but I don't remember. In other [677] words, they may have asked me what was doing out here, and I may have told them, but I don't remember whether I did or not.

Q. Did any of those gentlemen or any one every ask you to take any particular action as a director of the Pacific Gas and Electric Company on behalf of the North American Company?

A. They never did.

Q. Were you acquainted with Mr. Guy Earl——

A. Yes.

Q. (continuing) ——in his lifetime?

Do you remember that he was a director and member of the Executive Committee of the Applicant from 1930 until his death in June 1935?

A. I do.

Q. Did you ever discuss the business and affairs of the Applicant with Mr. Earl other than in a directors meeting?

A. Oh, we used to take the same boat across the bay after the meetings and it is highly likely that we may have chatted about what may have taken place at the meetings on our way down to the boat, but I don't recall except one thing and that was I debated the reference to the Federal Court in connection with the gas rate decision of the Railroad

(Testimony of Allen L. Chickering.)

Commission, I being opposed to going to court, [678] and, I believe, as I recall it, he was in favor of it. That is the only thing I remember.

Q. Did Mr. Earl ever request you to vote in any particular way or to take any particular action as a director of the company? A. No sir.

Q. Was Mr. Earl a particularly active director of the Pacific Gas and Electric Company?

A. He was very active in taking notes, and that's about all. He didn't talk up very much, but he took lots of notes.

Q. You recall the purchase by the Pacific Gas and Electric Company in 1930 of the stock of the Great Western Power Company of California and the San Joaquin Light and Power Company, then owned or controlled by the North American Company?

A. I do; but wasn't it the Western Power Corporation?

Q. Yes. I used the expression "then owned or controlled". A. Oh, yes.

Q. (continuing)—by the North American Company? A. Yes.

Q. The stock was actually owned by the Great Western?

A. Yes, I recall it very distinctly. [679]

Q. Will you state what you know of that transaction, how it came about, and how it was consummated?

A. The first that we heard of it, and when I say

(Testimony of Allen L. Chickering.)

"we" I mean the Executive Committee of the Pacific Gas. Well, when Mr. Hockenbeamer reported that Mr. Black was in town and that discussions relative to a purchase of the Great Western and San Joaquin were underway and that while nothing had been arrived at, Mr. Black he thought would take two million shares of P.G.& E., and Mr. Hockenbeamer seemed to me to be in favor of the purchase, and I asked him what he—how he arrived at it, and he said that he had taken the earnings of the companies which we were purchasing which were earned from the equity in the stock, and was offsetting them against the dividends on the two million shares which at that time were $2 a share, or would have been four million dollars annually, and I objected strenuously because I said and asked for the figures which I then got and I worked on them at great length, and my first deduction was to deduct the surplus that the P.G.—the same amount from the earnings of the Western Power group as the surplus above the dividends on the stock of the P.G.& E. amounted to.

While I haven't got the figures in mind, if the P.G.& E. earned, we will say, 50 cents above the $2 dividend, [680] I thought that that proportion ought to be deducted from the Western Power price, and having made that deduction we got the amount that the Western Power group ought to get for their stock down to a million six hundred thousand shares of two million shares.

(Testimony of Allen L. Chickering.)

Then I talked it over with Mr. Frank Anderson who was at that time a member of the Executive Committee, and we figured that the Western Power group ought to get a little something above their million six because of the fact that they were giving up their position in the utility world out here, and we added on a hundred thousand shares which made a million seven hundred thousand shares, and when we got in the meeting Mr. Miller said that he thought that we weren't adding enough for them giving up their position, that we ought to add another hundred thousand shares, making a million eight hundred thousand shares, and Mr. Anderson and I said we thought that Mr. Miller was cracked, which I do, and Mr. Hockenbeamer was quite disappointed because he said we would lose the deal and Mr. Black would go East; and I said that that made no difference to us, that there was excellent telephone and rail service between here and New York and he could come back, which he did, and took the million eight.

Q. Now, during these negotiations Mr. Hockenbeamer was constantly in touch with the members of the Executive [681] Committee, was he not?

A. Oh, we had meeting after meeting, we discussed it with the utmost detail and we went into the—I went into the thing for hours at home. I had to do it in order to come to the conclusion that I have just mentioned.

Q. And the other members of the Executive Committee were also active, were they not?

(Testimony of Allen L. Chickering.)

A. Very active, but the committee was split on that point. Mr. Elsey and Mr. Hockenbeamer were anxious to acquire the property that we brought; Mr. Anderson, Mr. Miller and myself did not want to acquire it at more than we thought was a proper price.

Q. Now, during those discussions and before the transaction was authorized by the Board of Directors, were there any discussions with respect to the position of the North American Company as a stockholder after the transaction was consummated?

A. Yes sir. The first thing that I objected to was the North American domination. I said I was afraid of it and Mr. Hockenbeamer said that he had been assured that there would be no domination, that they simply have an investment position; they wanted to have three members on the Board of Directors but that they would not exercise any domination or attempt to increase their holdings.

[682]

Now, I only know that from Mr. Hockenbeamer. I didn't talk with Mr. Black myself.

Q. That statement was made by Mr. Hockenbeamer? A. Yes sir.

Q. Before the transaction was consummated?

A. To the Executive Committee?

Q. Yes.

A. It was one of the first points the committee brought up, the objection of that sort.

(Testimony of Allen L. Chickering.)

Q. Now, following that transaction, so far as you know, has there ever been any attempt on the part of the North American Company to either control or influence the management or policies of the Pacific Gas and Electric Company?

A. None whatever.

Q. How long have you known Mr. Black?

A. At least 20 years.

Q. You knew Mr. Black for some time, did you, before he went East after the North American Company had——

A. (interposing) Oh, I knew him very well before that. That is why I called on him in New York just because I knew him well and liked him.

Q. You had known him by—or rather, you had known his work as an executive of the Great Western Power, had you not? [683]

A. In a general way; but I can think of one thing that will recall that I knew him pretty well as far back as 1920 or 21. They were nominating directors for the San Francisco Commercial Club and they asked to have the nomination in the open meeting of the club, in addition to being reported and put on the Board by a Nominating Committee, and I was asked to nominate Mr. Black, the idea being this, the nominee would stand up so the club would see who he was. I had nominated him then. I was selected because of my close acquaintance with him.

(Testimony of Allen L. Chickering.)

Q. Had you known any member of Mr. Black's family before he went East?

A. Well, I knew his—I didn't know his wife, but I knew her family from childhood, the MacIllraths.

Q. They were old time residents?

A. Yes sir, of Oakland.

Q. Of Oakland, were they not? A. Yes.

Q. Now, during the period after the North American transaction in 1930 and up until the time of Mr. Black's election to the presidency of the company in November, 1935, how often had you seen him?

A. Whenever I could. I used to go to New York quite often, say for example, twice a year, and if I had time, which I frequently did not, I always used to call on him. [684] Once I met him in a little restaurant in New York and chatted with him there, and when he came to San Francisco I believe that he always used to call on me. In fact, I gave a large lunch for him at the Pacific Union Club in September, 1935, when he was here on a visit. But I had no relations of any kind with him at any time until he became president of the Pacific Gas and Electric Company, other than socially.

Q. During these meetings that you have referred to did you discuss Pacific Gas and Electric's affairs as such?

A. I think that he always asked me how the company was doing and how the various people in

(Testimony of Allen L. Chickering.)

it that he knew were as to health, and I probably told him; but I haven't any specific recollection of it.

Q. Did he ever, during that period, request you to take any particular action on any Pacific Gas and Electric matter?

A. Not in the least degree.

Q. Do you recall Mr. Hockenbeamer's death in November, 1935? A. Very well.

Q. Was his death unexpected?

A. Yes, he was—he went to the hospital for observation a day or two before and Mr. Downing telephoned to me, I think, on the day that he died, that he was sinking; [685] and then later telephoned to me that he died, which was very unexpected to me.

Q. State, Mr. Chickering, what you know of the selection of Mr. Black as president of the company to succeed Mr. Hockenbeamer?

A. Well, we were in a rather weak condition at the time owing to the fact that there were only three members of the Executive Committee. Mr. Earl had died some little time before—I don't know when—but, for example, I would say about July of 1935, and Frank Anderson had died in September of 1935, so that the only members of the Executive Committee living were Mr. Miller, Mr. Elsey, and myself.

And one of these gentlemen asked me to come to the American Trust Company to Mr. Elsey's office

(Testimony of Allen L. Chickering.)

so that we might discuss a successor, and we spent a long time in which we went into every qualification that we could think of, and the first meeting we leaned toward Mr. Black, and we had another meeting. In the meantime I was to look up some things about Mr. Black, which I did in the meantime. And at the second meeting we were united a hundred per cent in favor of Mr. Black.

I don't know who brought Mr. Black's name up, but I was in favor of him from the beginning. And my reasons were these:

In the first place he was a comparatively young man, [686] he'd had an excellent—he was a graduate of the University of California, therefore a California man; he had married a California wife. He'd had an excellent training with the Great Western Power Company, which was a part of our organization. He was a director of the company already, which he was, and he had an additional qualification which I thought was exceedingly important and which turned the scale with me, and that was that he had had a great deal to do with financing in the North American Company, as I happened to know, because when I saw him in New York in June of 1935 I was there on a big piece of financing and it was an early piece of financing in the Securities and Exchange Commission, not the first, but an early one; and Mr. Black questioned me. And this was the San Diego Gas and Electric, by the way.

(Testimony of Allen L. Chickering.)

Mr. Black questioned me in great detail about the prices and how we arrived at them, and the number of years that the bonds had to run, and our experiences with the Securities and Exchange Commission and registration statements and so on, and he showed—he told me he was asking these questions in order to familiarize himself on account of some financing that some company he was interested in——I don't know what it was, what it was planning to do, and in the course of that conversation I became convinced that he was better equipped along financing lines, which I thought [687] were very important to the Pacific Gas and Electric than anybody in our organization and that qualification turned the scale in his favor with me, so I supported him.

I wasn't so familiar with his operations, but I inquired between the two meetings and I got nothing but a favorable result, so when I came back for the second meeting I reported to that effect.

We, thereupon, were unanimous in favor of Mr. Black, so we deputed Mr. Miller to ring up Mr. Fogarty of the North American Company to get his permission to approach Mr. Black. We figured that was the proper thing to do on account of the fact Mr. Black was working for the North American Company then. So Mr. Miller phoned Mr. Fogarty and reported to us that Mr. Fogarty was opposing—didn't want to let him go, but that he would think the matter over and call him up later on.

(Testimony of Allen L. Chickering.)

And Mr. Miller then later reported to Mr. Elsey and myself that he had heard from Mr. Fogarty and Mr. Fogarty said although he didn't want to see Mr. Black go he didn't feel that he had any right to stand in his way and therefore we might speak to him.

Now, this was all reported to me by Mr. Miller. I don't know anything except that.

So that we asked Mr. Miller to call up Mr. Black, which he did, and then he reported to us that Mr. Black [688] seemed favorable and would come out to San Francisco to talk it over, and I said to Mr. Miller: "Did you say anything in the conversation about Mr. Black severing all of his connection with the North American Company?"

And Mr. Miller said "No; I didn't think it was necessary. Of course he would do that."

And I said, "Well, that is not sufficient for me. I must insist that we telephone Mr. Fogarty and ask—or Mr. Black and ask him, tell him he must sever all connections with the North American Company."

And Mr. Miller said "Very well, I will do it."

But he evidently was irritated at me for suggesting it. And he did phone Mr. Black, as he told me, and he told me Mr. Black said he would, of course, sever any connection with the North American Company, and that satisfied me because I had Mr. Miller's word for it.

Q. And did the group of yourself, Mr. Elsey

(Testimony of Allen L. Chickering.)

and Mr. Miller then discuss the matter with other directors of the company?

A. Oh, yes. I think Mr.—we had Mr. Miller do that. Mr. Crocker testified about his father; I think Mr. Miller did most of that. We let him be our spokesman in order to avoid confusion.

Q. And at the next meeting of the Board of Directors Mr. Black was elected? [689]

A. Right.

Q. By the way, Mr. Chickering, have you ever owned any stock or securities of the North American Company? A. Never seen any of it.

Q. Do you know anybody who does own any stock in the North American Company?

A. Not to know that they do.

Q. You have mentioned a registration statement by Pacific Gas and Electric Company. Do you recall the filing of that registration statement?

A. The first one?

Q. Yes, the 1936 one. A. Yes.

Q. Or the 1935 one? A. 1935, yes, I do.

Q. What makes you remember?

A. Because I was opposed to it.

Q. Was that one of the first registration statements that were filed—— A. Yes.

Q. (continuing) ——by any public utility under the——

A. That is right.

Q. (continuing) ——Securities Act.

A. I would be glad to tell you, if you want, why I was opposed to it. [690]

(Testimony of Allen L. Chickering.)

The Examiner: Is this political or——

(Laughter)

By Mr. Phleger:

Q. Mr. Chckering, have you ever at any time or in any connection observed anything indicating that the Pacific Gas and Electric Company was controlled directly or indirectly by the North American Company or that the management or policies of the Pacific Gas and Electric Company were subject to a controlling influence directly or indirectly by the North American Company? A. No

Q. If the North American Company were to attempt to control or influence, directly or indirectly, the management or policies of the Pacific Gas and Electric Company would you oppose such attempt?

A. Most certainly I would.

Q. Do you think that the other directors of the Pacific Gas and Electric Company with the exception of Mr. Fogarty and Mr. Freeman, would also oppose such attempt? A. I do.

Q. In the event that the North American Company were to attempt to control or influence the management or policies of the Pacific Gas and Electric Company, do you think it would be able to do so? A. I do not. [691]

Q. If the North American were to attempt to secure sufficient proxies to obtain a majority of the representation at a stockholders meeting, and such an attempt were resisted by the management and directors of the Pacific Gas and Electric Com-

(Testimony of Allen L. Chickering.)

pany, do you think that the North American Company would be successful in its attempt?

A. I do not.

Q. What are the reasons for your last answer?

A. Well, in the first place, the Pacific Gas and Electric Company is, and always has been, a California Company; and not only I, but I think the public here generally are pleased with that situation.

They don't want any outsider dominating it.

In the next place I don't think that the holding company domination is at all popular; and *the* in the next place, the North American Company is practically unknown out here, either for good or bad.

The only time I ever heard it spoken of was when someone tried to bring it up in connection with some Fresno rate case quite a while ago.

And furthermore, I think the California public are very well satisfied with the management of the P. G. & E. being in California, and in the hands of California men. I don't think they want any change, or any outside domination. There are lots of other reasons, but I guess that is a—— [692]

Mr. Phleger: I think that is all, Mr. Chickering.

The Examiner: You want to cross examine?

Miss Calkin: It is 4:15, I thought I heard Mr. Chickering say he wanted to be gack in his office at 5:00 o'clock.

I know it will take me longer than that to cross

(Testimony of Allen L. Chickering.)

examine Mr. Chickering, so it would be necessary for him to return in the morning any how.

Mr. Phleger: As a matter of your convenience, if this is a convenient time for you, Mr. Chickering, I will——

The Witness: I have an appointment with the doctor at 5:00 in Oakland.

The Examiner: Well, then, we——

The Witness: (continuing) ——And I have a Caterpillar meeting at 9:00 o'clock tomorrow morning. I could get here at 10:30. Would that be all right? I can cut the Caterpillar meeting, if necessary, but I would rather not.

The Examiner: Unless there is some objection on the part of counsel we could start here in the morning with some other witness, then take your cross examination when it is convenient for you to be here, unless there is some other objection.

Mr. Phleger: I will arrange for another witness at 10:00 o'clock, then you be here at 10:30.

The Witness: Yes, it might be 10:35, but I will be [693] here as soon as I can.

Mr. Phleger: Yes.

The Examiner: All right; in that event the hearing will now be concluded until 10:00 o'clock tomorrow morning.

(Whereupon at 4:20 p. m. the hearing in the above entitled matter was adjourned to Tuesday, November 19, 1940, at 10:00 a. m. [694]

PROCEEDINGS

The Examiner: Are we ready to start now? I apologize to you all for being late.

Miss Calkin: We didn't even know you were late.

The Examiner: But it afforded you to have a little discussion off the record.

Mr. Phleger: Mr. Beckett.

Whereupon——

E. J. BECKETT

was produced as a witness for and on behalf of the Applicant, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Mr. Beckett, will you give your name and address for the record?

A. My name is E. J. Beckett; 245 Market Street, San Francisco.

Q. Mr. Beckett, are you connected with the Applicant? A. Yes sir.

Q. What position do you hold?

A. Assistant treasurer.

Q. What are the duties of that position?

A. My duties have included the preparation of [696] statistical and financial analyses relating to

(Testimony of E. J. Beckett.)

the possible acquisition of other utilities formerly operated in this territory; applications for listing the companies securities on various stock exchanges; studies connected with bond refunding and stock refunding operations; I have also been assistant in the preparation of communications to stockholders, including annual and interim reports, and prepared or assisted in the preparation of advertisements during stock selling campaigns and other financial advertising.

Q. How long have you been connected with the Pacific Gas and Electric Company?

A. Continuously since 1915.

Q. And what position have you held successively during that time?

A. I originally went to work for Mr. A. F. Hockenbeamer who was their vice-president and treasurer and later became president of the company; went to work for him on August 1, 1915, as a secretary and assistant, and was in his employ continuously until his death; and I have since served in a similar capacity with Mr. Black.

Q. When you say that you were in Mr. Hockenbeamer's employ, you mean you were under his personal direction?

A. Under his personal direction.

Q. Do you at the request of Mr. Black forward certain statistical information to Mr. Fogarty?

[697]

(Testimony of E. J. Beckett.)

A. I forward it to Mr. Freeman.

Q. Mr. Freeman? A. Yes, sir.

Q. Now, I show you Applicant's Exhibit 33 and will you go through it and state the various documents which you forward?

A. There are on this statement a few documents forwarded from our office; No. 9, consolidated income statement, No. 10—in comparative form—may I start again?—consolidated income statements in comparative form showing the month, year to date and 12 months to date, with supplementary statements showing revenue and the expenses by major departments, accounting classification and geographical division.

No. 10, consolidated balance sheets in comparative form with supporting schedules showing outstanding stocks and bonds, together with income statements and supplementary statistical data.

No. 12, copy of report submitted to the Edison Electric Institute showing sources and disposition of electric energy and classifications of customers.

No. 13, copies of Gas and Electric rate schedules, revised from time to time, by the filing of new schedules with the California Railroad Commission.

No. 14, copies of report for insurance companies, [698] prepared annually and mailed to the larger insurance companies and many of the institutional investors.

Q. Are those all of the documents and reports which you forward to Mr. Freeman?

(Testimony of E. J. Beckett.)

A. Yes, sir.

Q. Now, the items which you have denoted as Items 9 and 10, consolidated income statements in comparative form and consolidated balance sheets in comparative form, are they regularly prepared in the president's office and submitted by him to the Executive Committee or Board of Directors?

A. They are prepared in the accounting department and forwarded to the president, and he submits them regularly to the Executive Committee or the Board of Directors.

Q. And do you forward them to Mr. Freeman after the meetings at which they are submitted by Mr. Black? A. Yes, sir.

Q. Now, with respect to the copy of report submitted to the Edison Electric Institute, is that a form which is sent out by the Edison Electric Institute to all of its members? A. Yes.

Q. And is it true, then, after you have forwarded it to the Edison Electric Institute, do you send a copy to the North American Company?

A. That is right. [699]

Q. Is that report also submitted to the Board of Directors? A. No.

Q. Now, with respect to the copies of the gas and electric rate schedules which you stated you have forwarded from time to time. Those schedules are forwarded, are they not, after they have been sent in to the Railroad Commission?

A. After filing with the Railroad Commission, yes.

(Testimony of E. J. Beckett.)

Q. In other words, it represents a completed transaction? A. Yes.

Q. With respect to rates?

A. That is right.

Q. And you would have no communication with Mr. Freeman relative to rates prior to the filing of a rate schedule by the Pacific Gas and Electric Company, would you? A. No, I do not.

Q. Now, with respect to Item 14, the report for insurance companies, is that report made up on a form which has been prepared by the insurance companies themselves?

A. Yes, the original form was prepared by a committee representing the insurance companies and members of the electrical industry for convenience of the insurance companies and having a report which was standard for all companies. [700]

Q. About how many of these reports do you send out, copies of that report, do you send out?

A. There are around 400 copies of that report sent out from our office. They are forwarded to practically all insurance companies in the country having a gross income in excess of one million dollars, about three hundred of those and 70 or 75 additional copies are forwarded to anyone who is sufficiently interested to request them.

Q. So that one copy of the report which is sent out to some 400 investors is furnished regularly to Mr. Freeman? A. That is right.

Q. Is that correct? A. Yes sir.

(Testimony of E. J. Beckett.)

Q. Mr. Beckett, does the North American Company write to you periodically requesting certain information respecting Pacific Gas and Electric Company to be included in its annual report; that is, the report of North American Company?

A. Yes, not only the annual report but in the quarterly report, the president's quarterly report, to North American, that included some statistics showing the output of electricity and of gas and the number of customers served by electric and gas service for the year ended on the particular quarterly date, they write to us quarterly for that information which [701] we furnish them for their report.

Q. Is that information which you furnish them any different than is furnished to the Board of Directors or Executive Committee or to the Railroad Commission?

A. Possibly to the extent that it covers a twelve months period. As I recall it our reports which are filed normally show the month and year to date, but do not show a full twelve months period.

Q. But the information itself is similar to that which is furnished to the Board of Directors and the Executive Committee and the Railroad Commission? A. That is correct.

Q. Now, in—strike that out.

Have you been connected with the sale of securities, particularly stock, by the company?

(Testimony of E. J. Beckett.)

A. I have not worked directly in the stock sales department, but I have been generally familiar for a good many years with the method used by the company in selling stocks and the results of their sales campaigns.

Q. Will you state what took place in 1914 with respect to the sale by Applicant of a new class of preferred stock, stating the condition which made that desirable, how it was done, and what the results were?

A. Going back a little way from 1914, at the close of [702] 1913 the company found itself in a position where apparently the proportion of outstanding funded debt to the total capitalization was top-heavy.

December 31, 1913 there were outstanding in the hands of the public 80,485,800 par value of bonds and notes, $10,000,000 of par value of 6 percent preferred stock and $32,109,300 par value of common stock.

The surplus accounts amounted to approximately $2,197,000; the funded debt constituted 64.1 per cent of the total capitalization and surplus; preferred stock 8 per cent and common stock 25.6 per cent, and surplus 2.3 per cent.

The capital structure was obviously not well balanced and it was exceedingly difficult, particularly in view of the conditions of the securities market at that time for the company to obtain the additional capital funds needed to keep abreast of the growing needs of its business.

(Testimony of E. J. Beckett.)

The company's general refunding mortgage bonds, due January 1, 1942, the only medium of bond financing then available was selling in the low 80's.

Under the articles of incorporation then in effect the authorized stock capitalizations consisted of one million dollars of 6 per cent preferred stock, all of which was then outstanding; and 150 million dollars of common stock.

No dividends had been paid on the common stocks since April, 1913, and this stock could not be used as a medium [703] to raise the new capital. It was found necessary, under the circumstances, to resort to expansive short term borrowing.

With a view to remedying this unsatisfactory situation by getting more equity money and effecting a permanent improvement in its financial structure, the company, on June 3, 1914, addressed to its stockholders a circular letter outlining a proposed plan for amending its articles to effect a reclassification of share capital by reducing the authorized common stock to one hundred million dollars and authorizing a new issue of fifty million dollars of 6 per cent first preferred stock in addition to the then outstanding issue of ten million dollars of preferred stock, subsequently known as the original preferred.

The Examiner: At what rate of interest?

The Witness: The new stock bore a 6 per cent interest rate the same as the original stock.

(Testimony of E. J. Beckett.)

The Examiner: Originally it was what, 5-1/2 or 6?

The Witness: Originally it was also 6.

The Examiner: All right.

The Witness: The new first preferred stock not only assumed precedence over the original preferred with respect to assets and dividends, but it was also made non-assessable by the company.

The original preferred was assessable, and as a matter [704] of fact an assessment of $10 per share had been levied on this stock in 1907.

The new preferred stock was, therefore, definitely more attractive from an investment viewpoint.

As an inducement to the original preferred stockholders to consent to this plan of recapitalization, it was provided that they would have the right subsequent to June 30th, 1916, to exchange their holdings for the new stock at the rate of 10 shares of the original preferred for 10-1/4 shares of the new first preferred stock, and all of the original preferred was afterwards exchanged for the first preferred stock on this basis.

By Mr. Phleger:

Q. Now, what were the corporate proceedings and proceedings before the Railroad Commission which then took place?

A. A meeting of the stockholders was held and at that meeting, on June 15, 1914, stockholders approved the proposed plan and the company there-

(Testimony of E. J. Beckett.)

after made application to the California Railroad Commission for authority to issue its first preferred stock of the par value of 12 million five hundred thousand dollars, and also for authority on and after July 1, 1916, to issue additional preferred stock in exchange for the original preferred under the plan I have outlined. [705]

Q. In the authorization what did the Railroad Commission say with reference to this plan?

A. Commissioner Phelan wrote the opinion of the Commission, and in his decision, Railroad Commission decision No. 1632, the Commissioner stated:

"Applicant's plan to sell its new preferred stock appeals to me as purely sound and commendable. It will enable Applicant to refund the outstanding gold note issue of seven million dollars, put additional security behind Applicant's bonds, help take care of the margin between the 100 per cent of construction expenditures and the 90 per cent face value of bonds which Applicant can issue against construction expenditures and probably result in an increase in the price to be secured for its general and refunding bonds hereafter issued."

Q. What steps were then taken by the company to sell the preferred stock which had thus been authorized?

A. On July 1, 1914, the company circularized its stockholders inviting their subscription at 6 per cent, the first preferred stock, at the price of $82.50 per share to yield about 7-1/4 per cent on that same

(Testimony of E. J. Beckett.)

date, the subscription privilege subject to the prior rights of stockholders, but otherwise on the same general terms was extended to the [706] officers and employees of the company; and on July 24, 1914 the offer was also extended to all of the company's customers.

Q. And what was the method of sale and the result of the solicitation to purchasers?

A. The method of sale was, as I have stated originally, the circularization of all customers. At that time I think that approximately 250,000 circulars were mailed to customers.

Prior to the actual mailing of the circulars the districts and divisions and departments of the company were advised of the company's plan through meetings of employees and a small commission was paid to employees to encourage their solicitation of subscriptions of the stock among customers and others.

A commission, which I think was $1 per share on a $100 of par value, was also paid to certain other persons particularly in towns where the company had no district offices.

There was also some newspaper advertising carried on at that time. And as a result of this first campaign by the close of 1914 the company had sold approximately $8,800,000 par value of its 6 per cent preferred stock to more than 3,700 individual purchasers.

Q. Was the sale of that stock interfered with by [707] the opening of the World War?

(Testimony of E. J. Beckett.)

A. No, apparently not. As a matter of fact, while the stock markets of the country were demoralized to a certain extent, that it was found necessary to close the stock exchanges for a period of several months in 1914, these events did not seem to have any particular effect on the company's sale of stock.

A great number of the subscriptions apparently came from people who were not accustomed with stock market quotations and had no previous experience in making investments; a number of customers came from persons, comparatively small investors, who subscribed on the installment plan.

Q. So far as you know, was this the first attempt by public utility to undertake a comprehensive and systematic campaign to sell its stock to local owners? A. Yes sir.

Q. And who was responsible for the inauguration of the plan?

A. Mr. A. F. Hockenbeamer, at that time treasurer of the company.

Q. Did this experiment by the company in selling its stock to local owners through its own organization attract attention in the public utility field and in financial centers? [708]

A. Yes, it attracted a good deal of attention. It received a great deal of newspaper comment, not only locally but in financial centers of the East, and national financial magazines; I recall that one magazine conducted a competition with cash prizes for

(Testimony of E. J. Beckett.)

the best articles on customer ownership financing for some years, relating the methods employed and things of that type. And the company received a—received very numerous inquiries from other utilities asking the methods employed and the results attained and the costs, things of that type; and a great number of other companies subsequently adopted this plan.

Q. Did the National Electric Light Association form a corporation to conduct an educational campaign among its members as to the best methods to be followed in a similar campaign?

A. Yes; that method was formed, as I recall it—I haven't refreshed my memory—but I think that after four or five years after the plan had been started by the Pacific Gas and Electric Company, the idea had assumed such proportions that it was of national interest to the industry, and I think that committee was formed about 1918 or 19 and functioned for at least five or six years, possibly longer.

Q. Can you recall one of the statements made by a financial writer with respect to this program?

A. Yes. This statement was made by a financial writer [709] during the month of July, as I recall it, almost immediately after the first results of the campaign became known in 1914:

"A new trail through the jungle of finance has been blazed by the Pacific Gas and Electric Company of California. Financiers all over the United

(Testimony of E. J. Beckett.)

States have been following the pathfinders with the keenest interest. Other corporations with the stuff to stand the test are likely to follow the Pacific Coast leaders; at a time when the markets of the world were upset and new financing plans seemed almost suicidal, the Pacific Gas and Electric Company came boldly forward and offered to take their customers into partnership. Such an offer, particularly at such a time, had never been made before in the history of American corporations."

Q. Now, will you tell us of the subsequent experience of the company with respect to selling its securities directly to customers and residents of its territory; that is, I mean, subsequent to the first campaign in 1914.

The Examiner: This 1914 campaign of which you speak, was that before you joined the company or after?

The Witness: That was before I joined the company.

The Examiner: I see.

The Witness: I became very familiar with it because as Mr. Hockenbeamer's secretary I took dictation from him on a very large number of letters in response to inquiries [710] and I became quite familiar, under the circumstances, from the constant repetition—we received so many inquiries on the subject that Mr. Hockenbeamer said on the subject, "We would have to get out a pamphlet on the procedure followed and the results so we could

(Testimony of E. J. Beckett.)

mail it around in response to the number of inquiries we received."

By Mr. Phleger:

Q. These matters that you have just testified to are matters with which you became familiar in your position with the company, and the facts and figures were taken either from its records or were told you by Mr. Hockenbeamer. Is that right?

A. That is correct, yes, and subsequent to August, 1915, they are a matter of personal knowledge.

Q. Yes. Now, with respect to the sale of these securities to customers and residents of the company's territory, what was the experience of the company after the first sale in 1914?

A. The company continued that policy for many years, as its need for capital dictated. Stock was sold, as I recall it, almost continuously. Or strike that out. Not almost continuously, but campaigns were conducted in almost every year from 1914 until about 1932, except during the war period, 1916, 17 and possibly 18, when there was very little need for new capital. [711]

Preferred stock was not sold in each of those years, but I am correct in stating preferred stock was sold in many years prior to 1924 at least.

The last campaign of that type was in the early spring of 1932 when the company made an offering of five million dollars of its first preferred 6

(Testimony of E. J. Beckett.)

per cent stock at par, and sold that amount within a period of less than 2 months.

They received approximately 7,000 subscriptions.

During the entire period from 1914 to 1932 approximately $76,000,000 par value of first preferred stock, either 6 per cent or 5½ per cent, was sold direct by the company without any underwriting at a selling cost of approximately 63.4 per cent of $100 par value.

Q. Do you know how many individual sales that represented and what the average purchase was?

A. Altogether 68,668 individual sales were made, the average amount per purchaser being about $1100.

Q. Now, is it a fact that since 1914 the company has not sold any of its stock through the medium of underwriting with one exception?

A. Yes, that is correct.

Q. And what was that exception?

A. In 1919 the company sold five million dollars par value of its 6 per cent stock to Blyth Witter & Company who carried on a campaign somewhat similar to that which [712] had been carried on previously by the company.

Q. That was the only occasion, was it not, that the company sold its stock through underwriters in the 16 of the 26 years? A. 26, yes.

Q. Yes. Now, did the company sell common stock as well as preferred stock under the same plan?

(Testimony of E. J. Beckett.)

A. In 1924 the company made an offering of five million dollars par value of common stock to its stockholders.

The circulars, as I recall it, were mailed on July 9th, and stockholders subscriptions were invited, the company reserving the right to terminate the offer on August 1 of 1924.

Subscriptions were received to approximately $7,700,000 par value of stock, so the company applied to the Railroad Commission for authority to issue an additional five million dollars par value stock for the purpose of filling the subscriptions of the stockholders.

Later on, either in the fall of 1924 or early in 1925, additional common stock was sold over the counter in much the same manner that the preferred had been sold.

During those two years twelve million—and including the stock which was offered to stockholders which I have already mentioned, $12,500,000 par value common stock was sold at prices ranging from $93 to $109 per share, and [713] almost 10,000 subscriptions were received for this stock.

Since that time more than $53,000,000 of common stock has been sold direct by the company at par or better.

Q. Now, with the exception of the stocks, common stock sold by offering rights to subscribe to common stockholders, have all of the shares of stock that you have mentioned been sold, or substantially

(Testimony of E. J. Beckett.)

all, to residents of the Pacific Gas and Electric territory?

A. Are you referring to common stock or preferred stock?

Q. I am referring to preferred and such part of the common as was not sold by virtue of rights to subscribe.

A. I would say a predominant proportion was sold to residents of this territory.

Q. From the beginning, however, to the end were there any particular changes made in the method of distribution?

A. No. The experience of the company was that after the stock became better known it was easier to sell, it was found unnecessary in the later offerings to pay any commissions in connection with the sale, and the advertising was practically limited to a few newspaper advertisements. There was no change in the method excepting that there was less trouble in selling the stock.

Mr. Phleger: I will offer in evidence—— [714]

The Examiner: 44.

Mr. Phleger (continuing) ——as Applicant's Exhibit——

The Examiner: 44.

Mr. Phleger (continuing) 44, a statement headed "Pacific Gas and Electric Company summary showing increases in number of stockholders in California and outside California, July 1914 to June, 1940" and containing also a subsidiary table headed "Summary showing increase in par value of stock

(Testimony of E. J. Beckett.)

held in California and outside California June 1914 to June 1940", and a subsidiary, further subsidiary table, headed "Summary showing relative ratio of total capitalization and surplus represented by various classes of securities in the hands of the public, 1913 to 1940."

(The statements above referred to were marked Applicant's Exhibit No. 44 for identification.)

By Mr. Phleger:

Q. Mr. Becket, did you cause Exhibit 44 to be prepared? A. Yes sir.

Q. And are the facts and figures set forth thereon true and correct? A. They are.

Q. Will you explain what that exhibit shows?

A. The first table in the exhibit which was labeled "Table A" is intended to show the very marked increase [715] in the number of stockholders during the period from the inception of the customer ownership plan in 1914 up to approximately the present time, June 1940.

It shows that in June, 1914 the company had 2,898 stockholders, of whom 1,115 or 38½ per cent, were residents of California; and 1,783 or 61½ per cent, were located outside of the state.

In June, 1940, the preferred and common stock was owned by 95,836 stockholders of record, of whom 69,279, or 72.3 per cent, were residents of California; and 26,557, or 27.7 per cent, were outside residents.

(Testimony of E. J. Beckett.)

The increase—there was an increase during this period of 68,164 in California stockholders and 24,774 in outside stockholders.

Q. Is it fair to say, Mr. Beckett, that sales of company stocks during the period 1914 to 1940, in the method that you have described, has resulted not only in greatly increasing the number of holders of stock, but of locating the holders of stock in California to a relatively greater extent than was previously the case?

A. Yes sir. That is demonstrated by Table B, which shows that, in June, 1914, approximately 41.2 per cent of the company's total outstanding stock capitalization was held in California, and 58.8 per cent was held outside of the state. [716]

In June, 1940, 48 per cent of the total outstanding stock was held in California and 52 per cent outside of the state.

During that period there was an increase of 704½ per cent—704.5 per cent—in the par value of stock held in California contrasted with an increase of only 510.7 per cent in the par value of stock held outside the state.

Q. So that not only were the number of stockholders resident in California increased very greatly in proportion to those outside the state, but there was actually an increase in the relative proportion of stock held by those stockholders?

A. That is correct.

Q. Is that correct?

(Testimony of E. J. Beckett.)

Now, will you explain Table C?

A. Table C shows the relative ratio of total capitalization and surplus represented by various classes of security in the hands of the public at the close of 1913, prior to the inception of the customer ownership plan, and at June 30, 1940.

At the end of 1913 bonds and cost represented 64-1/10 per cent of all capitalization and surplus, preferred stock represented 8 per cent, common stock 25.6 per cent, surplus 2.3 per cent. [717]

June 30, 1914—or 1940, bonds and costs represented only 45.4 per cent of the total capital capitalization and surplus; preferred stock 21.3 per cent; common stock 24.8 per cent, surplus 8.5 per cent.

Q. What in your opinion are the principal benefits which have accrued to the company through its conception and execution of this program of customer ownership?

A. It is my judgment that the policies of securing a wide distribution of stock ownership through this territory has been of material benefit to the company, to its security holders and to its customers.

This customer ownership plan has provided a reliable auxiliary means of financing at relatively nominal expense, even at times when capital would ordinarily be difficult or unduly expensive to procure.

(Testimony of E. J. Beckett.)

It has been an important factor in building up the equity back of the company's bonds, improving the market for its senior issues and reducing the cost of money with the resultant reduction in rates for gas and electricity; it has provided many thousands of people in all walks of life with a relatively well protected medium for investment of their securities in an industry supplying industry services to a large number of California communities and industry, and in general it has been a general means of fostering sound public relations in this territory by [718] providing a better understanding among the local public of the company's business and policies.

The Examiner: Before you go further, I think the record should show this document, which has been offered as Applicant's Exhibit No. 44, will be received in evidence and marked as Applicant's Exhibit 44.

(The document above referred to was marked Applicant's Exhibit No. 44 and was received in evidence.)

By Mr. Phleger:

Q. Now, what effect, if any, did the conduct of the campaign through the company's employees have on those employees?

A. I think it was beneficial in two ways: In one direction it gave them an added interest in the company's affairs because they themselves subscribed to stock in a number of cases and to a

(Testimony of E. J. Beckett.)

larger number of employees it was beneficial because it gave them an incentive to learn more of the company's business so they could talk up the sale of the stock to their friends.

Q. Did it have the result of bringing the employees into close contact with larger numbers of residents in their respective areas?

A. Undoubtedly, yes.

Q. I show you Applicant's Exhibit 29, which shows [719] stockholders located in company divisions as of August 1, 1940. Referring to that will you state the relative proportion of company stockholders who are resident in the company territory as compared with the balance of California?

A. In the company territory there are 58,000, or there were on August 1, 1940, 58,472 stockholders owning 4,705,948 share of stock.

In the balance of California there were 10,670 stockholders owning 861,584 shares of stock; total California stockholders 69,142, and total stock held 5,567,532 shares of preferred and common stock.

Q. Would it be fair to say that approximately 6/7ths of the number of California stockholders holding approximately 6/7ths of the stock held in California are resident in the company's territory?

A. Yes, I would say that would be correct.

Q. Yes.

The Examiner: What exhibit was that to which you referred?

Miss Calkin: 29.

(Testimony of E. J. Beckett.)

Mr. Phleger: 29, Applicant's 29.

The Examiner: 29.

By Mr. Phleger:

Q. Mr. Beckett, during your connection with the [720] company have you ever at any time or in any connection observed anything indicating that the Pacific Gas and Electric Company is controlled directly or indirectly by the North American Company or that the management or policies of Pacific Gas and Electric Company are subject to a controlling influence directly or indirectly by the North American Company? A. No sir.

Mr. Phleger: That is all.

The Examiner: You want to defer cross examination and take Mr. Chickering who is now in the audience?

Miss Calkin: Could we have a short recess now?

The Examiner: Yes, have a five minute recess.

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

The Examiner: The hearing is resumed; Mr. Chickering has resumed the stand. You had—had you begun your cross examination of Mr. Chickering?

Miss Calkin: No, I hadn't started that.

ALLEN L. CHICKERING

was produced as a witness for and on behalf of the Applicant, and having been previously duly sworn, testified further as follows:

Cross Examination [721]

By Miss Calkin:

Q. Mr. Chickering, I believe you testified that you owned no stock in the North American Company. Do you own stock in the other subsidiaries of the North American Company?

A. Not that I know of. I don't know what they are.

Q. Well, they are primarily the operating companies in Cleveland, Washington, Milwaukee and St. Louis.

A. No, I don't own any.

Q. I believe you testified you are acquainted with Mr. Freeman?

A. I think I met him once, maybe twice. I wouldn't know him if I saw him now.

Q. You met him in New York, if you met him.

A. Yes, I went to see Mr. Black there.

Q. You referred in your direct testimony to a gas rate case. Could you describe that case briefly?

A. Oh, yes the—we got natural gas in here about 10 years ago and the Railroad Commission established rates which we thought were to extend beyond the time that we had recovered the loss resulting from intorducing natural gas.

By that I mean natural gas had a heating quality

(Testimony of Allen L. Chickering.)

of approximately twice the manufactured gas which we had previously been serving, and having that higher heating [722] quality naturally people wouldn't need to use as much, and it was therefore felt that our consumption would go down and it would take a couple years before the increased use, due to the cheaper and better fuel, would bring our earnings back.

Well, during that period the Railroad Commission was just beseiged by cities for lower rates and they established a lower rate which our people thought was too low, and there was a controversy in our organization as to whether it should be taken to the Federal Court or not.

That is what I referred to.

Q. You mean, the directors were opposing taking the case to the Federal Court?

A. I was, yes.

Q. And was the case taken to the Federal Court?

A. Yes.

Q. And that was during what period, whose presidency? A. Mr. Hockenbeamer.

Q. Mr. Chickering, I believe you testified at one time you were a member of the Board of the Standard Gas and Electric Company?

A. No, I never had any connection with them except I was attorney for a while; I never owned any stock or held any office, but I was their attorney for some years.

(Testimony of Allen L. Chickering.)

Q. Were you on the Board of the San Diego Company? [723]

A. Oh, yes. I had been on the Board of San Diego for probably—well, over 20 years, maybe 25.

Q. And you are still a member of that Board?

A. Still am.

Q. Did you represent the Standard Gas & Electric Company in the transaction which resulted in that company's acquisition of the securities of the applicant in 1927?

A. Yes, I did the legal work, yes—drew the contracts.

Q. And Mr. John J. O'Brien was on the Applicant's Board shortly thereafter as representative of the Standard Gas & Electric Company. Is that correct? A. That is right.

Q. When did Mr. O'Brien die, approximately?

A. Well, I should say, for a guess, that it was in 1936. I am not sure, though.

Q. Well, now when you went on the Board of the Applicant did you go on as a representative of the Standard Gas & Electric Company?

A. Originally, yes, I was vice-president of the Sierra and San Francisco Power and the Coast Valleys Gas and Electric and the Western States Gas & Electric which the Pacific Gas and Electric Company acquired as a part of that transaction; and Mr. O'Brien and I were elected directors of the Pacific Gas and Electric Company when those properties [724] were taken in as representing those interests,

(Testimony of Allen L. Chickering.)

but as far as I am concerned that long since terminated.

Q. So originally the Pacific Gas and Electric Company had two representatives on the Board, yourself and Mr. O'Brien? A. That is right.

Q. And Mr. Palmer, who was elected to succeed Mr. O'Brien, took his place on the Board, was not elected as a representative of the Standard Gas & Electric Company?

A. No connection with it at all.

Q. And you do not now consider yourself a representative of the Standard Gas & Electric Company?

A. I have no connection with them at all and I haven't had for a long time.

Q. And you say that in spite of the fact that the San Diego Company is a subsidiary of the Standard Gas?

A. Yes. That is an operating company. I am a heavy stockholder in it, and my family is a heavy stockholder in it, and the Standard holds the control of it.

Q. Are you acquainted with Mr. Emanuel and Mr. Crosley?

A. Never have seen them or spoken to them.

Q. Are you acquainted with Mr. Lynch?

A. Yes. He was an old Standard and Byllesby man. I have known him since he was a young man. In 1910 I think [725] I met him. But he isn't connected with Standard now as far as I know.

(Testimony of Allen L. Chickering.)

Q. Yes, I think that is true. I mean he was president of the company until the last few months?

A. That is right.

Q. Would you say that the Standard Gas & Electric Company has no representative on the Applicant's Board at the present time?

A. That is right.

Q. Were you ever associated with the Western Power Corporation or any of its subsidiaries?

A. No. I was trying to think if I had ever had anything to do with them. I don't think I ever did. I represented the underwriters in connection with a bond issue that they put out once. I don't remember much about it. But I think I represented Blyth & Company and Pierce-Fair in connection with it.

Q. Were Blyth & Co. the underwriters for the Western Power Corporation?

A. They were for that issue; that is all I know.

Q. Do you recall about when that was, or do you know whether it was when North American had control of the Western Power Corporation System, or before that?

A. I don't know. I didn't know anything about the North American Company at all. The only thing—until [726] this transaction took place whereby the Pacific Gas & Electric Company acquired the Western Power Corporation properties I rather doubt whether I had ever heard of the North American Company. I didn't have anything to do with it.

(Testimony of Allen L. Chickering.)

Q. You mean in 1929 and 1930 you had no knowledge that the Western Power Corporation was controlled by the North American Company?

A. I don't know; I can't remember.

Q. As a director of the Applicant——

A. (interposing) Oh, yes, I did. I did know that some New York Company had got control of it, but I didn't know anything about the company. I did know that some New York Company got control of the Western Power Corporation; that is right.

Q. Who had the control of that system before North American controlled it?

A. I don't know. I remember a man named H. P. Wilson, who used to be around in connection with it, and Mortimer Fleishhacker, but whether they controlled it or not I have no idea.

Q. Was Mr. Wilson a California man?

A. I never met him but a few times. It runs through my head—I am more or less speculating—that he was a member of a brokerage firm here of Brown & Wilson at sometime, but I didn't know him then. How long he was here or his [727] antecedents, I don't know.

Q. Prior to 1925 was Western Power Corporation reputedly controlled by California interests or Eastern interests? A. I don't know.

Q. As a director of the Applicant what contacts have you had, or do you have, with the Vallejo Electric Light & Power Company?

(Testimony of Allen L. Chickering.)

A. None whatever, with one exception: When the last three Pacific Gas and Electric Company bond issues were put out we represented the underwriters, my firm, and we thought it was necessary to make an investigation of the stock holdings of the Pacific Gas & Electric Company, and whether the stock of companies that they were interested in had been validly issued and things of that sort, so I sent a young man from our office up to investigate the Vallejo Light & Power Company corporate proceedings.

Personally, I have never known any of the Vallejo Light & Power people at all. In fact, I don't even, can't even recall the name of the people who control it.

Q. Are the operating problems of that company considered and taken up at Board meetings of the Applicant? A. Never.

Q. I believe you testified that Mr. Hockenbeamer carried on the negotiations on behalf of the Applicant with [728] the North American people in 1929 and 1930? A. That is right.

Q. And that the Applicant was very anxious to acquire those properties?

A. Some of the Applicant.

Q. You mean some of the directors?

A. Yes.

Q. You testified that you represented the Standard Gas & Electric Company in the acquisition at the time the Applicant acquired a large, some of

(Testimony of Allen L. Chickering.)

the subsidiaries of the Standard Gas & Electric Company. As attorney for the Standard Gas & Electric Company at that time do you recall that company being required to give a written assurance as to the extent of its participation in the affairs of the Applicant?

A. No. That was thirteen years ago. I don't recall it.

Q. Do you recall anything that occurred at that time in the way of an assurance on the part of the Standard Gas & Electric Company that it would not take an active participation in Applicant's affairs as the then largest stockholder?

A. No. The contract which covered all these essential points was only two pages long, as I prepared it, and I don't think there was anything about that in it at all.

Now, Mr. O'Brien and Mr. Creed had many discussions [729] when I wasn't there. As far as I can recall, I can't remember any; maybe there were, but I can't remember any.

Q. Do you recall any provision in that contract relating to the disposal of the stock of the Applicant by Standard Gas & Electric Company?

A. It is too big a stretch on my memory; I can't remember.

Q. And you don't recall any discussion having taken place at that time regarding the extent to which Standard Gas & Electric Company would participate in Applicant's problems?

(Testimony of Allen L. Chickering.)

A. No. I know that Standard Gas never made any effort to control me as a director of the Pacific Gas and Electric Company. In fact, I voted the way I thought was right and in one instance, at least, I voted against what they thought was right.

Q. You don't recall then anything that would indicate that Applicant's Board in 1927 was apprehensive that Standard Gas & Electric Company, as one of the large holding companies, might attempt to control the Applicant?

A. Well, it seems to me that there was something, but I can't remember it. Your suggestion makes me think that there was something, but it is too long ago and I can't recall it.

Q. What discussion was had in 1929 and 1930 concerning [730] the extent to which it was contemplated that North American might participate in the Applicant's affairs if it acquired a large block of its common stock?

A. Well, naturally all we knew was what Mr. Hockenbeamer told us and I for one, and several other directors, were apprehensive of any holding company acquiring such a large interest and we voiced that apprehension in the meetings of the Executive Committee. Mr. Hockenbeamer told us that the North American Company would take an investment interest only and would not make any effort to control us. He also told us that they would not increase their proportionate ownership in our stock. Whether there was any agreement to that

(Testimony of Allen L. Chickering.)

effect or not, I don't know, but we took Mr. Hockenbeamer's word for it.

Q. Would you say that those assurances by North American were received at the insistence of certain members of the Applicant's Board?

A. Well, I think that all of us felt that way, Miss Calkin. I think even Mr. Hockenbeamer felt that way.

Q. But you had no discussions personally with any representatives of the North American on the subject?

A. No. I knew Mr. Black very well, but in the particular instance the only knowledge I had that he was here was through Mr. Hockenbeamer reporting having seen him. [731]

Q. What was the understanding with reference to North American's representation on Applicant's Board in the event that it acquired a block of your securities?

A. Mr. Hockenbeamer told us that they were to have three members on the Board of Directors; name three members of the Board of Directors.

Q. What about the Executive Committee?

A. Mr. Earl was put on the Executive Committee, which was enlarged to include him, but it is hard for me to testify with regard to what somebody else did and told me; so whether that was a part of the agreement or whether he was elected as a matter of course, I am unable to say.

Q. The representation on Applicant's Board by North American then was pretty largely worked

(Testimony of Allen L. Chickering.)

out by Mr. Hockenbeamer?

A. Entirely, as far as I know. I had nothing do with it.

Q. Was the Board acquainted with that arrang ment prior to the time the transaction was consu mated? A. I would say yes.

Q. And the Board in effect approved the a rangement which Mr. Hockenbeamer had made?

A. I would say yes.

Q. How many representatives does Nor American now have on the Applicant's Board? [73

A. I think they have two; Mr. Freeman, I thi it is, and Mr. Fogarty.

Q. Do you know why North American has on two representatives on Applicant's Board rath than three members as was originally understood could have?

A. Well, I think it is largely due to the fa that we didn't elect a North American man aft the vacancy occurred. We elected, as I recall, M Wishon to fill the vacancy.

Q. I believe the record shows that Mr. Palm was elected?

A. He filled Mr. O'Brien's place.

Q. You don't recall then any conversations pr ceding Mr. Palmer's election to the Board to th effect that North American had relinquished i right to a third member in order that Mr. Palm might be elected?

A. No; because Mr. Palmer filled Mr. O'Brien place. I might say that when new directors a

(Testimony of Allen L. Chickering.)

elected the president has uniformly consulted at least with the Executive Committee. In other words, I have been consulted about the filling of every vacancy. I was consulted in the case of Mr. Palmer. I was consulted in the case of Mr. Wishon, Mr. Henry Nichols. I believe those are the recent ones. I think the president consulted with all the Board on such matters, I know he did with the Executive Committee, and [733] did with me.

Q. Well, in your conversations with the North American Company when you were in New York, and the occasions of Mr. Fogarty's visits here, have those representatives ever told you that North American's representation on Applicant's Board was not as important since Mr. Black was president of the Applicant as that representation was during Mr. Hockenbeamer's lifetime?

A. I never heard it suggested until you just suggested it now.

Q. Do you consider Mr. Black as a representative of the North American Company?

A. Most decidedly not. That was the reason I insisted on Mr. Miller telephoning back to require that he sever all connection with the North American Company before we elected him president.

Q. Mr. Black was, however, a representative of the North American Company on the Board until his election as president? A. I think he was.

Q. What do you know about the proxy machinery of the Applicant? By that I mean, who selects the

(Testimony of Allen L. Chickering.)

proxies and makes up the slate of directors before your annual stockholders' meeting?

A. Well, I never had any occasion to give it any [734] special attention. I believe that Mr. Black and Mr. Foote, and possibly one other, are usually selected as the proxies; and before Mr. Hockenbeamer's death he was one of them. It was perfectly satisfactory to me.

Q. Would you say that the president selects the proxies or does the Board make that selection, or the Executive Committee?

A. I have sort of a—I think the matter has come up to the Executive Committee, but it isn't important enough to have stayed in my memory.

Q. You are familiar, are you not, with the proxy statement which must accompany all solicitation of proxies under the S. E. C. rules? A. Yes.

Q. Do you know who prepares the slate of directors which is included in that proxy statement?

A. I think it comes up at the meeting of the Board, of the Executive Committee. If there has been some change, or something to fix it in my memory, it would have stayed, but I can't remember now.

Q. Do you know how the Applicant is advised as to who North American's representatives will be on the Board for the ensuing year? A. No.

Q. What directors, other than employees of the [735] Applicant, would you say were most active in the affairs of the Applicant?

(Testimony of Allen L. Chickering.)

A. The Executive Committee.

Q. You mean the directors who are members of the Executive Committee? A. Yes.

Q. How would you compare the functions of the Board with those of the Executive Committee?

A. Well, the Executive Committee meets once a week and usually takes quite a long time. You see, we have to run this company ourselves and we have to spend a lot of time studying our problems. We take sometimes as much as an hour and a half or two hours, and we all discuss the problems and express our views pro and con, which often differ materially from each other.

The Board of Directors meets approximately once a month and everything that has come up in the Executive Committee, with the exception of merely routine matters, is brought up to the Board. To a member of the Executive Committee many times it is a little tedious because a matter is rehashed that they have heard discussed in the Executive Committee meetings. But the Board of Directors is fully advised and takes a full part in everything except purely formal matters, such as making quit claim deeds to unneeded rights of way or passing on the issuing of new stock certificates, [736] and things of that sort.

Q. Does Mr. Black ever advise the Board or the Executive Committee at its meetings as to North American's recommendations or viewpoints on the particular matter when the subject is being consid-

(Testimony of Allen L. Chickering.)

ered by the Executive Committee or by the Board?

A. As far as I know he has never mentioned them.

Q. What about Mr. Hockenbeamer, did he frequently advise the Board or the Executive Committee as to communications he had received from North American on a particular problem?

A. No. As far as I know he never received any; maybe he did.

Q. Since you have been a director have you ever been advised from any source what North American's desires were with respect to a particular matter?

A. Yes. Once in 1935 we cut the dividend from 8 per cent to 6 per cent.

Q. I believe that was in 1933, wasn't it?

A. Was it in 1933?

Q. I think the previous testimony shows that.

A. All right—1933. I was not at the meeting. I attended a funeral of a friend in Stockton so I wasn't at the meeting. But the dividend was cut by a divided vote and after the meeting I saw Mr. Earl, and he was indignant [737] at the dividend being cut and said that he thought that his principals would be too, but we didn't change it.

Q. And his principals referred to the North American Company? A. That is right.

Q. Has the Board or the Executive Committee ever asked Mr. Black whether he had conferred with North American people on certain major problems

(Testimony of Allen L. Chickering.)

and, if so, what suggestions North American has made? A. No. We don't care.

Q. What weight would you give to any suggestion made by North American in view of the fact that that company is your largest stockholder?

A. None whatever.

Q. Has there ever been any major difference of opinion between the Board and Mr. Black since he has been president?

A. None that I recall.

Q. Has the Board ever disapproved a matter recommended by Mr. Black?

A. We have argued things back and forth with him over and over again. There was much more disagreement with Mr. Hockenbeamer than with Mr. Black.

Q. Why was that true?

A. As far as I was concerned, because I didn't agree with him on lots of things and I stayed with my point of view. [738]

An example was the financing in, I think, 1935, before Mr. Hockenbeamer died, and there was an underwriter from New York out here by the name of Mr. Russell. He suggested that we issue $45,000,000 serial bonds maturing $3,000,000 a year, at an interest rate of 3-½ per cent, which was then considered low. When that was put up to the committee I stood out against it on the ground that the company, in such bad times as that, could not af-

(Testimony of Allen L. Chickering.)

ford to agree to pay $3,000,000 a year in serial maturities.

The committee was against me, but I believe they later came to my point of view on it.

Q. Were the notes issued as proposed by Mr. Hockenbeamer or by Mr. Russell?

A. They were not; the serial notes were not issued. The serial bonds were not issued, but a 30 year bond issue was put out at a higher rate of interest.

Q. And that was not the plan originally submitted by Mr. Russell?

A. Well, I never saw him but once at that time and, therefore, Mr. Hockenbeamer had the conversations with him and it would be drawing on my imagination to state what he suggested. But the first thing that came to my notice was the 15 year serials of $3,000,000 a year, and I was opposed to it.

Q. Did the bonds that were issued have a sinking [739] fund provision? A. Yes.

Q. But the requirements were not that heavy?

A. They were 30 year 4 per cent bonds and the sinking fund is comparatively small. This wasn't a sinking fund. It was a serial maturity.

Q. I understand. So, in your opinion, the relationship between Applicant's Board and Mr. Black has been more harmonious than the relationship was between Mr. Hockenbeamer and the Board?

A. Yes. Of course, I have a definite reason for thinking that, but I won't give it unless you want it.

(Testimony of Allen L. Chickering.)

Q. I would like to have it if you don't mind giving it.

A. I think Mr. Black is the best utility executive I have ever seen, and he is right on the job all the time in running this company and what he suggests he has talked over carefully with the members of the Board and Executive Committee before it comes up and we understand pretty well what it is about, and it is right according to our views.

Q. You mean by that that Mr. Hockenbeamer was more inclined to run the company without such advice of the Executive Committee?

A. I will put it this way; If Mr. Hockenbeamer was right, I was wrong, and vice versa, many times. I don't [740] know which was right.

Q. Mr. Chickering, do you feel free to act on any problem confronting the Applicant without receiving North American's recommendations regarding the particular matter?

A. Yes; most decidedly so.

Q. In your direct testimony you testified to everything that you know concerning Mr. Black's selection as president of the company?

A. Oh, I have covered the head notes of it. There were a few other odds and ends. Mr. Miller, Mr. Elsey and I consulted several times, and I had to look up some matters with regard to Mr. Black. The one thing that I didn't know about Mr. Black directly was his ability in operating and I had to look that up for the three of us, which I did. I

(Testimony of Allen L. Chickering.)

knew his public relations had been good because living here I knew that while he managed the Great Western Power Company, in spite of some difficulties that the company had, that he brought its public relations up in good shape. But I wasn't 100 per cent familiar, never having had any business with him, with his operating ability and I had to look that up. I did.

Q. Did you make that investigation before Mr. Miller was delegated to contact Mr. Fogarty?

A. Oh, yes. [741]

Q. So that the members of the Executive Committee were in accord on Mr. Black's selection prior to the time any contact was made with Mr. Fogarty?

A. That is right.

Q. Do you know whether or not the question of salary was ever discussed with Mr. Black at the time he came out here?

A. No, it wasn't prior to the time. In fact, I discussed the question of salary with him, having been deputed to do so by Mr. Miller and Mr. Elsey, but I did it in their presence.

Q. That discussion took place after Mr. Black's election?

A. No. It was in the American Trust Company.

Q. I believe the record shows that Mr. Black was elected prior to his coming to California.

A. Well, then, it was after he came to California because it was in the American Trust Company here, and it was when he came out following our

(Testimony of Allen L. Chickering.)

long distance telephone conversation with him through Mr. Miller; but whether it was before or after he was elected, I can't say.

Q. But as far as you know there were no salary discussions prior to his coming here?

A. That is right. I had all the salary discussions with him myself. [742]

Q. And if he had been elected prior to this time the salary discussions took place after his election?

A. That is right. But if he hadn't been elected it took place before, because personally I would have thought it took place before, but I don't know.

Q. Was the possibility that Mr. Black, because of his association with North American might be influenced and dominated by North American, considered and discussed by the members of the Executive Committee, or the Board, when he was considering his selection?

A. Yes. None of us thought so.

Q. If you had been of that opinion would you have elected him as president? A. No.

Q. Was the Board at that time as zealous of maintaining the management of the Company in California as it was in 1930, in your opinion?

A. Fully as much so, I would say. In fact, Mr. Black's connection with the North American Company was a black mark against his name that we gave the biggest consideration in connection with choosing him, and it was only after we determined to our satisfaction, or to the best of our judgment

(Testimony of Allen L. Chickering.)

that he would not be influenced by North American that we decided to elect him.

Q. Do you consider the influence of North American in [743] the affairs of the Applicant detrimental? I mean, if there should be such an influence would you consider it detrimental to the interests of the Applicant?

A. I don't like holding company influence; any holding company influence.

Q. Before Mr. Black was offered the position did the Executive Committee, or the Board, receive any assurance from him as to his future attitude toward any suggestions which North American might make?

A. Well, we telephoned back to him and told him that he would have to sever all connection with the North American, and he said of course he would; that that went without saying. That was reported to me by Mr. Miller. That was enough assurance for me.

Q. And so far as you know, prior to Mr. Black's election as president no member of the Board discussed with him the effect, or what effect his prior association with North American would have upon his susceptibility to North American recommendations?

A. I don't know what Mr. Miller said to him, except as he reported to me. I was insistent that he should be clear of the North American Company, and I insisted on spending the money to telephone

(Testimony of Allen L. Chickering.)

back to him to find out that he would be. I thought that he would be. I thought that his taking the position would mean that he would be [744] clear of the North American Company, but I continued to make sure that he was, so I insisted on Mr. Miller calling him back, which Mr. Miller didn't think was necessary, but finally did.

Q. Do you think it would be possible for North American to exert a very substantial influence over Applicant's management and policies if it exerted such an influence over Mr. Black, even though North American representatives never have attended Board meetings, or had any contacts with any of the other directors?

A. That is an awfully hard question to answer because they might have a very benign influence that would be so benign that we wouldn't recognize it as having come from them. I am inclined to be very heavily influenced by what Mr. Black says,—that is an answer to your question.

Q. You do not know of your own personal knowledge the extent of Mr. Black's contacts with the North American people?

A. Well, I don't know fully, but he hasn't been East very much, and they haven't been out here except when Mr. Fogarty has been out here to the Bohemian Jinks once or twice. No, I don't know.

Q. Then it would be possible for Mr. Black to obtain advice from the North American Company on major problems without your knowledge?

(Testimony of Allen L. Chickering.)

A. I don't believe it would because he is talking to [745] us all the time, and he questions us for our views, never brings the North American Company in at all. In fact, I don't think that the North American Company has a darned thing to do with it.

Q. Would you say that there have been no major changes in the operating or financial policies of the Applicant which has been put into force since Mr. Black has been president?

A. In the financial progress of the company Mr. Black, after thoroughly consulting with the Executive Committee, continued on the same program of refinancing that Mr. Hockenbeamer had started, except that at the urgency of some of the members of the committee he made a California house the head of our underwriting syndicate instead of a New York one, that being Blyth & Co., instead of a New York house.

Q. Are you familiar with the reports which the Applicant sends to the North American Company?

A. I didn't know they sent any.

Q. Then so far as you know North American doesn't receive any information concerning the Applicant other than that received by any other stockholder?

A. Not that I know of. I never have anything to do with them at all. It is just speculation, because I never have anything to do with them, or have any connection [746] with them at all.

(Testimony of Allen L. Chickering.)

Q. Do you know whether or not a copy of Applicant's proposed budget is submitted to the North American Company for review or suggested changes prior to the time it is approved by the Board?

A. They certainly do not.

Q. Do you know whether or not North American is consulted regarding major construction projects before the same are acted on by the Board?

A. I do not.

Q. Do you know whether or not North American has been consulted regarding any phase of the Hetch Hetchy situation?

A. I have no knowledge of any such consultation whatever.

Q. Who recommends the payments of dividends to the Applicant's Board?

A. Well, I don't know as anybody does particularly. We first ascertain whether we have—oh, yes, Mr. Black recommended the increase in the dividend. After several years of 6 per cent dividends he recommended the increase to 8 per cent. I believe since that time he—I believe the next time the dividend came up he said something to the effect that he thought we might be able to pay the regular rate again. Since that about all he has said is, "Next [747] on the list is to take up the matter of the common stock dividend." Some person moves it be declared, and someone seconds it, and it is carried. We first look up to see if we have earned

(Testimony of Allen L. Chickering.)

it, but when we have there is no particular formality about it.

Q. Has Mr. Black ever told the Board or Executive Committee at a meeting attended by you what North American's ideas on the subject of dividends on the common stock were?

A. Never mentioned it.

Q. Have you ever discussed the matter of Applicant's dividend policy with Mr. Fogarty or any representatives of the North American Company?

A. No, except as I told you awhile back, that Mr. Earl was very indignant when the dividend was reduced, and told me so. I listened to him; that is all.

Miss Calkin: Will you mark this (indicating) for identification?

(The photostatic copy of letter referred to was marked Commission's Exhibit No. 18 for identification.)

By Miss Calkin:

Q. Mr. Chickering, I hand you what has been marked for purposes of identification as Commissioner's Exhibit No. 18, and will ask you if you can identify from that photostat what it is supposed to be. [748]

A. That (indicating) is my signature.

Miss Calkin: We offer that in evidence as Commission's Exhibit 18.

The Examiner: You have seen that, Mr. Phleger?

Mr. Phleger: Yes; I have a copy of it here.

(Testimony of Allen L. Chickering.)

Mr. Gerdes: It is dated July 1, 1930?

The Examiner: Yes. It will be received in evidence and marked Commission's Exhibit No. 18.

(The photostatic copy of letter referred to was marked Commission's Exhibit No. 18 and received in evidence.)

By Miss Calkin:

Q. In that letter I believe you referred to your desire to discuss certain matters with Mr. Black shortly after the consummation of the transaction in which North American acquired a substantial block of the common stock of the Applicant.

What matters were you anxious to, or desirous of discussing with Mr. Black at that time?

A. I guess it was rather a simple matter, but I had four particular friends in the Great Western Power Company organization that I didn't want to see lose their jobs.

Mr. Hockenbeamer had told us how much could be saved through the consolidation of the companies and I knew that meant letting a lot of men out. I had four particular [749] friends in the Great Western Power Company, namely, Mr. Wishon, Mr. John W. Wrenn, W. H. Spaulding and Mr. Robert Sharon. I knew these people personally, but I didn't know about their ability and I was anxious to see them retained in the consolidation. I had hoped to get his slant about their abilities so as to give me some fuel in talking with Mr. Hockenbeamer.

(Testimony of Allen L. Chickering.)

Mr. Spaulding I had known since youth. Mr. Wrenn had been the manager of a gas company of which I was a member of the Executive Committee in Los Angeles. Mr. Sharon's family I had known since youth. Mr. Wishon and I had been great friends for many years. I was anxious to see them all retained and I wanted to get some assistance from Mr. Black as to their abilities to enable me to put up a fight for them.

Q. What further correspondance have you had with representatives of the North American Company?

A. Oh, I probably have written Mr. Black. For example, I always used to attempt to see him when I was in New York, on account of a warm personal friendship and admiration for him, and if I missed him he might write me saying he was sorry that he had missed me, or something of that sort.

I don't recall, but if you have got any other letters I could identify them.

Q. I don't have any others. Have you had any [750] correspondence with any of the representatives of North American since Mr. Black has been president of the Applicant?

A. I don't remember any, except Dave Hawkins who, I believe, is their attorney, and he is a good personal friend of mine. I don't think I have ever written to him anything about any Pacific Gas and Electric Company matters.

(Testimony of Allen L. Chickering.)

Q. Is he associated with the firm of Sullivan & Cromwell? A. Yes.

Q. Has Sullivan & Cromwell done any work for the Applicant?

A. No, not that I know of.

Q. In connection with the transaction in 1930 was there any discussion that you can now recall as to whether or not the bankers for the Western Power Corporation system would have any claim on the financing business of the Applicant?

A. I don't even know who they were. I don't believe there was.

I don't want to leave that with a loose end. I had represented, as I recall, Pierce-Fair & Co., and Blyth & Co., in connection with the Western Power Corporation debenture issue of $10,000,000 sometime prior to this transaction in 1930—is that it?

Q. Yes. [751]

A. (Continuing) —but I don't think I had any idea of whether they were the regular bankers for the Western Power or whether they just handled that particular issue. I don't recall their having been brought into this matter at all.

Q. Do you know how it came about that the National City Company got the leadership of all of the Applicant's financing from about 1921 until 1931 when the National City went out of business?

A. No. That was before my time.

Q. The Applicant I believe, the testimony shows, issued $25,000,000 principal amount of bonds in

(Testimony of Allen L. Chickering.)

1930 and $25,000,000 in principal amount of bonds in 1931. Do you know who proposed these two pieces of financing to the Board?

A. I don't remember it now. Probably the president, though.

Q. Do you know who selected the National City Company to head these two pieces of business?

A. I have an impression, but not knowledge, that Mr. Hockenbeamer did.

Q. Did you have anything to do with the participation of any of the members of the syndicate which purchased those two issues?

A. I endeavored to get Byllesby & Co., which was an [752] underwriting house connected with the Standard Gas & Electric Company, in that syndicate, and I may have tried to get Blyth & Co., and Pierce-Fair, in that syndicate, and probably did, but I can't remember that now.

Q. I believe the evidence shows that Blyth & Co. had the second position—scratch that. The information isn't here.

Do you know who carried on the negotiations between the principal underwriter, that is, National City Company, and the applicant in connection with the 1930 and 1931 issues?

A. Again, I don't know, but I think it was Mr. Hockenbeamer. I know I had nothing to do with it.

Q. Do you know whether any one connected with Blyth & Co. ever expressed any dissatisfaction with their position in the 1930 and 1931 issues?

(Testimony of Allen L. Chickering.)

A. I have heard so recently.

Q. You do recall the $45,000,000 issue in 1935 that you previously testified about?

A. Yes.

Q. At that time I believe the National City Company was no longer engaged in the investment banking business. What was the first thing that you can now recall as having heard as to who would succeed to the position of the National City Company in Applicant's financing?

A. A gentleman by the name of Mr. Stanley Russell, [753] who was connected with the firm of Lazard Freres & Co. in New York and who, I think, had previously been connected with the National City Company, came out as representing the underwriting houses and was introduced to me by Mr. Hockenbeamer in his office.

Q. Do you know whether or not North American was consulted regarding the leadership of the syndicate that purchased the March 1935 issue?

A. I haven't any idea. Mr. Hockenbeamer was a very affirmative gentleman, though, and accustomed to having his head. I doubt whether they were; but may be they weren't.

Q. Who would you say was responsible for the selection of Lazard Freres & Co. to head the 1935 syndicate? A. Mr. Hockenbeamer.

Q. Did any members of the Executive Committee, or the Board, voice their disapproval of the selection of that firm? A. I don't remember.

(Testimony of Allen L. Chickering.)

Q. You met Mr. Russell through Mr. Hockenbeamer?

A. Yes.

Q. You had no personal acquaintance with him prior to that time?

A. Never saw him before I met him in Mr. Hockenbeamer's office.

Q. Was that in connection with the 1935 issue?

[754]

A. When we were discussing this 15 year serial. I was in talking with Mr. Hockenbeamer about something else and Mr. Russell came in and Mr. Hockenbeamer said that Mr. Russell was there and that he would have him come in and introduce me to him. He did.

Q. Were there any other banking houses seeking the leadership of Applicant's financing in the spring of 1935?

A. I didn't have anything to do with it. I remember that Blyth & Co., Byllesby and Pierce-Fair —I can't remember who they were.

Q. Did any representatives of any of those firms contact you in an effort to get you to use your influence to get them the leadership?

A. No; no.

Q. You never discussed the leadership of the March 1935 issue with any representatives of the North American Company?

A. No. I have never seen them but three or four times in my life.

Q. Was there any discussion over the manner in

(Testimony of Allen L. Chickering.)

which the March 1935 issue was disposed of to the public? A. There was on my part.

Q. Did you voice your dissatisfaction to the other members of the Board?

A. I didn't vote for it in the Board of Directors. I [755] refused to vote.

Q. You refused to vote for what, the selection of Lazard Freres, or for the issuance of these——

A. (interposing) For the putting out of these securities. I didn't vote against it. I thought it was bad organization, but I didn't vote, and I was recorded as not voting.

Q. But did you express any dissatisfaction of the manner in which the issue was handled after the same had been sold to the public or to the underwriting group? A. Not that I recall.

Q. You are acquainted with Mr. Blyth?

A. Very intimately. He is one of my best friends.

Q. And he is the president, or the head of the banking firm of Blyth & Co.? A. Yes.

Q. Do you consider Blyth & Co. a California underwriting house? A. I do.

Q. Does your law firm represent the firm of Blyth & Co.?

A. It has for—oh, 22, 23 or 24 years, maybe.

Q. Did Mr. Blyth ever talk*ed* to you during 1935 regarding the desire of his firm to head Applicant's financing? [756]

A. Never mentioned it.

(Testimony of Allen L. Chickering.)

Q. Did you ever tell Mr. Blyth that you would assist his firm in getting that business?

A. No. I had already made the move before I ever said anything to Mr. Blyth and Mr. Blyth was away when I made the move.

Q. What move did you make?

A. As soon as Mr. Black became president I took up the matter of having Blyth & Co. head our syndicates, and my reasons for doing it were varied; the most important ones being that I thought, and I still think, that a California concern should sell its bonds in California, and through a California house, especially when we have houses of such high standing as a number of our houses here, like Blyth and Dean Witter and several others that I could name.

Another reason was that I was dissatisfied with the price we got for the previous bonds and the spread. I didn't like the idea of having Eastern financiers coming out here and telling us where we could get off on money.

Also, Mr. Blyth is one of my best friends and, in my opinion, as good, if not the best man in that business in the United States for fairness and judgment. So I wanted to get that house to represent the P. G. & E., rather than some New York house.

Q. But you never made any effort in that direction [757] until after Mr. Black became president?

A. I don't think I ever mentioned it until Mr. Black became president. Then I took it up on my

(Testimony of Allen L. Chickering.)

own volition and, incidentally, without knowledge of certain letters that a Blyth man in New York had written to Mr. Blyth out here, which I never heard of until several years afterwards.

Q. And you didn't express to Mr. Hockenbeamer any dissatisfaction over his selection of Lazard Freres & Co. to head the business?

A. I think I did. I told you a while back that I didn't on the first issue, but there were a couple of other issues and I think I did ask him why we couldn't have a California house heading it, especially when we had one that was as good as any of the New York houses. I think I did. But I am not quite certain of it.

Q. Applicant's Exhibit No. 42 shows that the Applicant sold a $45,000,000 bond issue in April of 1935 to the syndicate headed by Lazard Freres & Co., a $30,000,000 issue in July of 1935, headed by Lazard Freres & Co. and a $20,000,000 issue in September of 1935. A. That is right.

Q. And that those were all of the issues in 1935?

A. Yes.

Q. The next piece of financing by the Applicant was a $90,000,000 issue in April of 1936, the same exhibit shows. [758] Your conversation with Mr. Black regarding Blyth & Co.'s leadership was prior to the April 1936 issue?

A. Yes; that is right.

Q. What did Mr. Black say in response to the conversation?

(Testimony of Allen L. Chickering.)

A. The first time I saw him he let me give my reasons, which I have to some extent given to you, and he was quite non-committal, but that he would take it under consideration. The next time I saw him he told me he had decided to do it. Whether I had anything to do with influencing him, or whether he made up his own mind, or how it happened, I don't know; but that is the sequence of the events.

Q. And did you later discuss your conversation with Mr. Black with Mr. Ford of Blyth & Co.?

A. I discussed—yes, I did. I discussed the first conversation with Mr. Ford. Mr. Ford said that they couldn't do anything, or take any part in connection with it, or couldn't discuss it because they were members of a syndicate of which Lazard Freres & Co. was the head, and the ethics of the business forbade them to discuss anything of the kind.

I said, "Well, you don't need to because I am going to do it."

Q. Was the substance of Mr. Ford's remark that in [759] view of the fact that they had had a substantial position in the syndicates headed by Lazard Freres & Co. that they would want to appear as not seeking the business, but having the business given to them by the Applicant?

A. No. He said they couldn't discuss it; that it was not ethical to discuss it.

Q. Do you recall that at the time of your first

(Testimony of Allen L. Chickering.)

conversation with Mr. Black regarding this matter that Mr. Miller was present at the conversation?

A. No. Mr. Miller was not present. Mr. Black was alone with me in his office. I afterwards mentioned it to Mr. Miller, though.

Q. Mr. Chickering I hand you what purports to be a copy of a letter dated December 19, 1935, from Mr. Ford to Mr. Blyth, for the purposes of refreshing your recollection.

A. (Referring to letter indicated) That is probably Mr. Ford's recollection. I did discuss the matter with Mr. Miller. I wouldn't have said that Mr. Black was present, but Mr. Miller—"I couldn't very well have any objection as one of the partners in the firm is my son-in-law"—referring to Mr. Ford. But I don't think that Mr. Black was present at that conversation. I think that Mr. Ford, in writing this letter, had perhaps put in his own impression on the matter. The way I told it to you is the way I recall it. [760]

Q. Did Mr. Miller, when you talked to him, give you the opinion that he was more favorable to Blyth & Co.'s leadership than he was to that of Lazard Freres & Co.?

A. Well, what I just said would indicate that. He said, naturally—I think his words were substantially: "Well, naturally I am in favor of your efforts because one of the partners of Blyth & Co. is my son-in-law" referring to Mr. Ford. That would indicate that he was favorable, according to my interpretation.

(Testimony of Allen L. Chickering.)

Q. Do you know whether or not Mr. Black conferred with any representatives of the North American Company prior to the Board's approval of the issue of the $90,000,000 in bonds?

A. I have no idea.

Q. I believe you testified at the time you talked to Mr. Black the second time regarding Blyth & Co., he told you that he had desired to let that firm head the syndicate? A. That is right.

Q. Do you know why Lazard Freres & Co. was reduced to fifth position in the $90,000,000 issue?

A. I had nothing to do with it. I know nothing about it.

Q. Did you or the Board have anything to do with the selection of the other syndicate members?

[761]

A. Well, I was awfully anxious to give California houses a chance. That is one of the objections I had had to the handling by the New York syndicate, that the California houses, in my opinion, didn't have enough of a chance. I spoke in favor of Dean Witter & Co., and also, I believe several other smaller houses. In fact, I know I did. I also tried to see that Byllesby & Co. was in the syndicate as I was friendly with them and anxious to see them stay in the syndicate.

Q. Do you know whether or not North American was more favorable to Blyth & Co.'s leadership than it had been to that of Lazard Freres & Co.?

A. I haven't any idea. I never thought of it in connection with it.

(Testimony of Allen L. Chickering.)

Q. Do you know the circumstances which resulted in Dillon Read & Co. getting a substantial participation in the $90,000,000 issue?

A. Well, I heard—do you want me to tell you what I heard?

Q. Yes.

A. I heard that the $90,000,000 issue was considered to be rather a substantial chunk for one syndicate to bite off and it was believed that on an issue of that size it was a good idea to have a little assistance, and that Dillon Read & Co. and, I think, Morgan Stanley, were taken in, [762] according to my recollection, for $15,000,000 apiece, just for that one job. They weren't taken in the syndicate permanently, but for that one job, on account of the very large amount of bonds that were being marketed. That was, I think, the biggest issue that had been put out of utility bonds at that time; close to it anyway.

Q. Who gave you that information?

A. I think it was Mr. Blyth.

Q. Do you know whether or not Dillon Read & Co. was included at the suggestion of the North American people? A. I haven't any idea.

Q. Did you know at that time that Dillon Read & Co. had done a considerable amount of financing for the North American system?

A. Never heard of it until now, if it is true.

Q. Do you know where the negotiations between the Applicant and Blyth & Co., in regard to the

(Testimony of Allen L. Chickering.)

issues headed up by Blyth & Co. in 1939, were carried on? A. Right here in San Francisco.

Q. Who carried on those negotiations on behalf of the Applicant?

Mr. Black, I think. Incidentally, he always reported back to the Executive Committee, as he does on all these things. He keeps his Executive Committee thoroughly informed at all times. [763]

Q. Do you know why Dillon Read & Co., Morgan Stanley & Co., Kuhn Loeb & Co., did not participate in the syndicates which bought the $30,000,000 and $35,000,000 issues of Applicant's bonds in May and October of 1936?

A. Well, the only reason I know is the one that I have given to you, which is purely hearsay: That the $90,000,000 issue was regarded as so large that they needed outside assistance.

By the way, Kuhn Loeb was not in that, was it?

Q. Yes, I think so.

Mr. Phleger: Yes; they were in on that $90,000,000 issue.

The Examiner: Dillon Read & Co. and Kuhn Loeb & Co. for seven and a half million each; and Stanley Morgan for ten million.

The Witness: The understanding I had was that they were only in that one issue, on account of its great size; but the other issues being smaller we didn't need any outside assistance. So they were not in those.

(Testimony of Allen L. Chickering.)

By Miss Calkin:

Q. Who would you say was responsible, if you know, for those three firms being included in the April 1936 syndicate?

A. Mr. Blyth was the head of the syndicate and I suppose you would say he was responsible. [764]

Q. The last substantial piece of financing of the Applicant was a $15,000,000 issue in February of 1938. A. Right.

Q. Which was privately placed. Who determined to privately sell that issue, rather than have it sold to the public?

A. Well, Mr. Black talked it over with the committee and said that Blyth & Co. thought that it could be privately placed. Incidentally, I have been mixed up in larger issues than that that have been privately placed. Where you have a small issue as that nowadays it is pretty good business to do it direct and save a lot of expense.

Q. Do you know whether or not North American played any part in the decision to privately place the $15,000,000 issue?

A. I never heard them mentioned in connection with it at all.

Q. Would you say that the North American Company has never played any part in shaping the financial policies of the Applicant?

A. Yes, I would.

Miss Calkin: That is all.

The Examiner: Any redirect?

(Testimony of Allen L. Chickering.)

Redirect Examination

By Mr. Phleger: [765]

Q. Mr. Chickering, in 1935 or 1936, did you speak to any other officers or directors of the Pacific Gas and Electric Company besides Mr. Black and Mr. Miller with respect to your view that it would be desirable for the company to do its financing with Blyth & Co. a western house?

A. Well, I am rather inclined to think that I expressed it in the meeting, in a meeting.

Q. Do *you what* the attitude of the other members of the Board of Directors, or the Executive Committee, were with respect to Blyth *was?*

A. It seems to me it was the Executive Committee, and it seems to me they were all favorable.

Mr. Phleger: That is all.

The Examiner: Anything further?

Miss Calkin: That is all.

The Examiner: You are excused, Mr. Chickering.

(Witness excused)

The Examiner: We will recess until 2:00 p. m.

(Whereupon, at 12:30 p. m. a recess was taken until 2:00 p. m. of the same day.) [766]

Afternoon Session

(The hearing was resumed pursuant to the taking of recess at 2:00 o'clock p. m.)

The Examiner: I think you are next, aren't you, Mr. Beckett?

Mr. Phleger: Mr. Livermore, will you take the stand?

Mr. Livermore: Here?

The Examiner: Yes, sir, if you will, please. Raise your right hand.

Whereupon—

NORMAN B. LIVERMORE,

produced as a witness for and on behalf of the Applicant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Phleger:

Q. Mr. Livermore, will you give your name and residence address for the record?

A. Norman B. Livermore; residence, Ross.

Q. How long have you been a resident of California, Mr. Livermore?

A. Ever since I was born.

Q. How long has your family before you lived here?

A. Well, my grandfather came in either '49 or '50, in the early 50's; my father came in '55.

Q. Your family has lived here ever since your father [767] came? A. Yes.

Q. What is your business or profession?

A. I am an engineer by profession, but mostly engaged in the commercial side of engineering for a good many years.

(Testimony of Norman B. Livermore.)

Q. What corporations are you affiliated with as a director or officer?

A. Well, I don't know as I can remember all of them, but I can remember the principal ones. The Pacific Gas and Electric Company, the Crocker Bank, the Fireman's Fund Indemnity, the California Packing, and several others, but they are minor corporations.

Q. Are you connected with the Coffin-Redington Company?

A. Yes, I am president of that company.

Q. These other corporations that you mentioned, do you hold any office other than director?

A. Well, I would have to think; no, mostly just director or on the committees.

Q. Have you any substantial financial interest in any corporation or enterprise whose main activity is not on the Pacific Coast? A. No, no.

Q. Would it be fair to say that almost all of your financial interests are in California enterprises? [768]

A. It is probably too true. I was talking with a financial man this morning and he said I was too much centered in California.

Q. What is the business of Coffin-Redington Company?

A. Wholesale drug distribution.

Q. Mr. Livermore, I show you applicant's exhibit 32, and directing your attention to a compilation statistically showing stock in the corporation

(Testimony of Norman B. Livermore.)

held by you and affiliates; by reference to it would you state the number of shares of stock of applicant which you, yourself, own?

A. Well, it's—the—my stock is in what is known as a personal holding corporation. I don't think there is any in my own name, but it's a personal holding corporation of which I own all the stock, and that corporation has 6,700 shares, that is, all belonging to the personal holding corporation, 6,700 shares at this time.

Q. Is that of preferred or common?

A. Common.

Q. And how many shares of preferred are owned by members of your family or other affiliated interests?

A. I should say about 3,000; I haven't footed them up, 3,000, I should say, various members of the family.

Q. So that you and various members of your family hold approximately 3,000 shares of preferred and 6,700 shares of common? A. Yes. [769]

Q. You have already testified that you are a director of the Crocker First National Bank of San Francisco. Will you state how many shares of stock of applicant is held by the Crocker First National Bank of San Francisco, in fiduciary or other capacities?

A. The first preferred, 61,000—I am taking it from this record which I think I have seen; I think this must be correct. It looks correct—61,383 preferred, and 20,659 common.

(Testimony of Norman B. Livermore.)

Q. Mr. Livermore, do you own any shares of stock of the North American Company?

A. No.

Q. Have you ever owned any shares of stock of that company? A. No.

Q. Do you own any shares of stock or securities of any affiliate or subsidiary company of the North American Company?

A. No. I—at least, I don't think so. I don't know what the affiliates are.

Q. When did you first become a director of the Pacific Gas and Electric Company?

A. Well, I first became a director of the corporation which preceded it. It was the California Gas & Electric Corporation. I can't remember how long ago—it was about 30, 35 years ago, I should say. [770]

Q. That was before the incorporation of the Pacific Gas and Electric Company? A. Yes.

Q. What connection, if any, did your family have with public utilities properties which later became and are now parts of the Pacific Gas and Electric system?

A. Well, my grandfather, I think, was the pioneer in water power in the state before transmission of the electricity was started. He headed the foundation of the Folsom dam in the early '60's and it was never completed at that time, but my father took it up in the '80's, and they completed the dam and put the first long distance transmission in of

(Testimony of Norman B. Livermore.)

any since, in California, or as a matter of fact, in the world, from Folsom to Sacramento. It was done under the name of the Folsom Water Power Company.

Q. When was that?

A. The transmission was completed, I think, in the early '90's. I can't remember the exact dates.

Q. Yes. Following that did your family and yourself become interested in other companies which have since become part of the Pacific Gas and Electric system?

A. Yes. The Folsom Water Power Company was, you might say, succeeded by the Sacramento Electric Light and Power Company, and they acquired the street railway system [771] and the gas company, and that was succeeded by the Sacramento Electric Gas and Railway Company, which went into the California Gas and Electric Corporation.

Q. And your family and yourself were interested in the Sacramento Electric—Gas and Electric Company, were they?

A. Yes; we have been interested ever since the Folsom Water Power right through.

Q. Yes; so that your family and you, as successor, have owned securities in their properties which later became part of the Pacific Gas and Electric Company since its organization, dating as far back as the early 1890's?

A. Well, it would be earlier than that, because the Folsom Water Power Company went 'way back to the '60's.

(Testimony of Norman B. Livermore.)

Q. Now, how early were you personally connected with any of the properties which are now part of the Pacific Gas and Electric system?

A. Well, I was—I used to do engineering work for the subsidiary companies. I have done it starting in in my college work, when I was in college, I used to do engineering work for the Folsom Water Power Company and I continued to do that for a good many years up to the time when the Sacramento Electric Gas and Railway Company was merged with the California Gas and Electric Corporation.

Q. Now, how long back was that first active partici- [772] pation by you?

A. Well, I was in the class of '94 in Berkeley, and I suppose it was about '90 when I first started going on surveys, and construction work in the summer.

Q. With the exception of the period of the World War, have you served continuously as a director of the Pacific Gas and Electric Company since soon after its incorporation?

A. Yes, continuously except when I was in the Army.

Q. How long have you known Mr. D. H. Foote?

A. Oh, I have known him ever since California Gas and Electric days. That's a great many years, must be. I can't tell you exactly, but it's many, many years.

Q. Almost 40 years, would you say?

(Testimony of Norman B. Livermore.)

A. Well, I should say so. Time goes by so fast.

Q. How long have you known Mr. C. O. G. Miller?

A. Oh, I have known Mr. C. O. G. Miller before I went to college even.

Q. How long have you known Mr. John D. McKee?

A. Oh, many, many years, but to the—almost as long as I have known Mr. Miller.

Q. How long have you known Mr. Allen Chickering?

A. Ever since we were boys together.

Q. How long have you known Mr. Downing?

A. Well, the first time I heard of him, met him, was in his football days, in college. I think that was in '97. [773]

Q. You did not play against him, by any chance?

A. No, I did not.

Q. How long have you known Mr. Coghlan?

A. Mr. Coghlan I have not known quite so long, but a great many years.

Q. How long have you known Mr. McIntosh?

A. Well, ever since he was paying teller in the old First National Bank, which must be about 40 years or more.

Q. How long have you known Mr. Wishon?

A. I first met Mr. Wishon when I made a report for the Sacramento Gas and Electric Railway Company of all the power plants in the state. My recollection is that I met him down in Fresno when he

(Testimony of Norman B. Livermore.)

was a young man at that time. I am not sure it was him or his brother, but I think it was he.

Q. That was a number of years ago?

A. That was back in the '90's I guess—somewhere along there.

Q. How long have you known Mr. Silas Palmer?

A. Oh, ever since we were boys together.

Q. How long have you known Mr. William W. Crocker?

A. Well, I have known him—he's younger than I am—but I have known him ever since he came back from college, and his father, I knew his father longer.

Q. You knew his father before him, did you not?

A. Yes. [774]

Q. For many years? A. Yes.

Q. How long have you known Mr. Henry D. Nichols?

A. Ever since we were boys together.

Q. Were you acquainted with Mr. Frank Dame during his lifetime?

A. I may have met him once but I am not sure.

Q. Were you acquainted with Mr. Edwin Gruhl during his lifetime? A. No.

Q. Are you acquainted with Mr. F. W. Doolittle?

A. No.

Q. Do you know Mr. Herbert B. Freeman?

A. I met him once.

Q. Are you acquainted with Mr. James F. Fogarty? A. I met him once.

(Testimony of Norman B. Livermore.)

Q. Have you ever communicated with any of the gentlemen I have just named by letter, telegraph, telephone, or otherwise? A. No.

Q. Have you ever discussed Pacific Gas and Electric Company affairs with any of the gentlemen whom I have just named? A. No.

Q. Were you acquainted with Mr. Guy C. Earl in his [775] lifetime? A. Yes.

Q. Did you ever discuss Pacific Gas and Electric affairs with Mr. Earl other than at meetings of the Board of Directors of the Pacific Gas and Electric Company?

A. No, never outside of meetings.

Q. Did Mr. Earl ever request you to vote in any particular way or take any particular action as a director of the Pacific Gas and Electric Company?

A. No.

Q. Do you recall the acquisition in 1930 by the Pacific Gas and Electric Company of the securities of Great Western Power Corporation of California and of San Joaquin Light and Power Company owned by the North American Company or its subsidiaries? A. Yes, I remember that.

Q. State what you know of the transaction.

A. Well, the things was very, very carefully studied by the executive committee and the officers of the company and they gave the results of their study and their recommendations, and my function was simply to vote as a member of the Board, either vote for or against their recommendations and they

(Testimony of Norman B. Livermore.)

had figures enough to make me feel that it was a proper thing to do.

Q. Do you know whether or not the question of the [776] acquisition of those properties from the North American Company had been a matter of discussion and consideration by the company for some considerable time before the action was consummated?

A. Not in the Board, may have been, probably was—I couldn't say how long it was discussed by the executive committee and the officers of the company.

Q. Do you recall in the previous years whether the question of the acquisition of the Great Western Power Company by Pacific Gas and Electric was under consideration?

A. I think it had been, but I have no very clear recollection. My recollection is that it had been suggested but it did not come to a head, at least not—may have been when I was away, but I have no clear recollection on that point.

Q. Do you recall whether Mr. Hockenbeamer made any statement to the Board of Directors in connection with this purchase relative to the position that the North American Company would occupy after it became a stockholder in Pacific Gas and Electric Company?

A. Why, my recollection is that he said that it was,—they were to simply act as an ordinary stockholder after the transaction had been completed,

(Testimony of Norman B. Livermore.)

there were no—it was just like any other transaction; the thing we were concerned with was whether the terms were satisfactory from our point of view.

[777]

Q. Was there any discussion in the Board at the time of the transaction as to whether or not after the transaction the North American Company would or would not attempt to influence or control the policies and management of Pacific Gas and Electric Company?

A. There was such a discussion at various times and we Californians, of course, didn't want to lose our identity and we were assured that such a thing would not happen.

Q. That assurance came from Mr. Hockenbeamer?

A. From the executive committee, and I was not on the Executive Committee at that time, so if they came into the Board and assured us—I spoke to Mr. Hockenbeamer once or twice about it and he assured me we would still have control of our California company.

Q. How long have you known Mr. James B. Black?

A. I have known him for a good many years. I can't say just how many. He was a young man, much younger than I, whose career we watched with a great deal of interest.

Q. Did you know Mr. Black when he was connected with the operations of the Great Western Power Corporation?

(Testimony of Norman B. Livermore.)

A. I knew him not intimately, but I did know him, yes.

Q. And did you know of his activities and accomplishments as an officer of the Great Western Power Company? A. Yes.

Q. During the period 1930-35, that is, between the time [778] that the Pacific Gas and Electric Company acquired the properties of North American Company and the time when Mr. Black became president of the Pacific Gas and Electric Company, did you see him frequently, or at all?

A. I am afraid my mind was wandering a little bit. Would you mind repeating that?

The Examiner: Read it, Mr. Reporter, please.

(Question referred to read by the reporter as above recorded.)

A. No. I—he called on me for a few minutes in San Francisco, and I returned his visit in New York, and I think that was the only times I saw him.

By Mr. Phleger:

Q. And during those two meetings did you discuss the affairs of Pacific Gas and Electric Company?

A. No. We discussed generalities. We didn't discuss the company at all.

Q. When did you become a member of the executive committee of the Pacific Gas and Electric Company?

A. Well, I can't remember exactly. It was several years ago. Time goes so fast again.

(Testimony of Norman B. Livermore.)

Q. Would December 18, 1935, appear about right to you? A. That is about right, yes.

Q. What do you know of the circumstances surrounding the election of Mr. Black as president of the company? [779]

A. Well, of course, we had a vacancy in the office of the president and it was very—at that time I was on the Board. I was not on the executive committee, but it was my duty to vote intelligently on a successor to Mr. Hockenbeamer, and there were certain discussions in regard to this subject in which I did not participate, but I won't—I was asked to go to a meeting in which I inferred it was going to be decided, and I said to myself as I went to the meeting, "If nobody else brings up Mr. Black's name I will bring it up." But I didn't bring it up because it was brought up by others.

Q. It is a fact that the name of Mr. Black as the candidate for president of the company occurred to you without being suggested by anyone else?

A. Yes, sir.

Q. Where was the meeting that you have just mentioned held?

A. It was either in Mr. Miller's office, or, as I remember it, Mr. Miller and Mr. Chickering asked me to come around, and I think it was in Mr. Miller's office, although I wouldn't be sure. I think that was it.

Q. That was just an informal meeting?

(Testimony of Norman B. Livermore.)

A. An informal meeting of the Board before the Board voted.

Q. Do you know who else besides Mr. Miller and Mr. [780] Chickering were present?

A. I don't think there was anybody present except those three of us. I am not quite sure. I couldn't say. I couldn't say, I am sure.

Q. Do you know who at that meeting first brought up the name of Mr. Black?

A. I think it was Mr. Miller, but I wouldn't be sure.

Q. I see.

A. Either Mr. Miller or Mr. Chickering.

Q. You give the substance of the conversation which took place at that meeting.

A. Well, the—they said they would ask me to come around before the meeting and discuss the matter of the new president and we—almost immediately Mr. Black's name was mentioned and I said, "Well, that's funny, because I am very glad of it because if you hadn't brought it up I would have. As long as you have brought it up it just suits me exactly." And we discussed his qualifications and the fact that he was a younger man, which was quite a point in his favor, and we all agreed. And that's all there was to it.

Q. Did Mr. Miller make any statement to you at that meeting with respect as to whether or not Mr. Black would sever all connections in the North American Company if he were elected president?

(Testimony of Norman B. Livermore.)

A. I don't think so because—well, I don't [781] remember any discussion. I think there was, and possibly that he would not accept the offer.

Q. So that you were talked to before Mr. Black had been spoken to about it? A. Yes.

Q. At a later date were you told anything with respect to Mr. Black's severing all connections with the North American Company when he assumed the presidency?

A. Yes. Well, at a later date I knew that he had accepted and that he was going to throw in his lot with the Pacific Gas and Electric.

Q. Have you always felt perfectly free as a director and as a member of the executive committee to express your views on any pending matter and to vote in accordance with your own conclusions?

A. Yes.

Q. Has any person during the period you have been a director and during the period that you have been a member of the executive committee dominated and controlled the actions of the Board of Directors or of the executive committee?

A. No.

Q. With the exception of the transaction in 1930 when the Pacific Gas and Electric Company acquired the stock of these companies from the North American Company, [782] have you ever heard the name of the North American Company mentioned in any meeting of the directors or the executive committee of the applicant?

(Testimony of Norman B. Livermore.)

A. No. I don't recall the mentioning of the name.

Q. Have you ever been told at any meeting of either the directors or the executive committee what the attitude of the North American Company was with respect to any pending matter?

A. It may have been mentioned that there was —it might have been mentioned the time when Mr. Black came out, and I think it was, that we could expect a perfectly free hand in advertising the company as owned and managed principally by Californians and we could expect a perfectly free hand in the future as we had in the past.

Q. Have you ever at any time or in any connection observed anything indicating that the Pacific Gas and Electric Company was controlled directly or indirectly by the North American Company or that its management or policies were subject to a controlling influence directly or indirectly by the North American Company?

A. No, I have not.

Q. If the North American Company were to attempt to control or influence directly or indirectly, the management or policies of the Pacific Gas and Electric Company, would you oppose such attempt?

[783]

A. Yes, I would.

Q. Do you think that the other directors of the Pacific Gas and Electric Company, with the exception of Mr. Fogarty and Mr. Freeman, would also oppose such an attempt?

(Testimony of Norman B. Livermore.)

A. I believe they would.

Q. In the event that the North American Company were to attempt such control or influence of the management or policies of the Pacific Gas and Electric Company, do you think it would be able to do so?

A. I don't think they could control the company as against the California directors.

Q. If the North American Company were to attempt to secure sufficient proxies to obtain a majority of the representation at a stockholder's meeting and such an attempt were resisted by the management and directors of the Pacific Gas and Electric Company, do you think that the North American would be successful in its attempt?

A. I do not.

Q. Why?

A. I believe the California directors have sufficient connections and influence and acquaintanceship so that no eastern group could obtain a majority.

Mr. Phleger: That is all, Mr. Livermore.

Trial Examiner: Cross examination? [784]

Cross Examination

By Miss Calkin:

Q. Mr. Livermore, have you ever been associated with the Western Power Corporation or any of its subsidiaries?

A. No. I had a little stock in it once but I sold it.

(Testimony of Norman B. Livermore.)

Q. Do you know who controlled that company prior to—who had control of the Western Power Corporation prior to 1925? A. No, I don't.

Q. Was it reported to have been controlled by Western or Eastern interests, if you know?

A. I couldn't say.

Q. In your capacity as director of the applicant and member of its executive committee, what consideration do you give to the problems of the Vallejo Electric Light and Power Company?

A. Well, we feel that we ought to co-operate in every way that we can, and its been the policy throughout to co-operate insofar as we can, and try to work in a harmonious way with those developments.

Q. Who determines the policies of the Vallejo Electric Light and Power Company?

A. Oh, the Vallejo? Oh, yes. I thought you meant the Central Valleys. Vallejo is what you speak of?

Q. Yes. The Vallejo Electric Light and Power Company. [785]

A. Well, as far as I know, the majority interest determines tne policies.

Q. Well, as a director of the applicant do you have any part in the determination of the operating or financial policies of the Vallejo Electric Light and Power Company? A. No.

Q. Are those problems discussed at your Board meetings? A. Occasionally, yes.

(Testimony of Norman B. Livermore.)

Q. And in what connection?

A. Well, we just simply—the problems come up and such problems as the stockholder would have to consider, and they are discussed with the officers and executive committee. I don't recall them being discussed in the Board.

Q. Who in your opinion controlls the Vallejo Electric Light and Power Company?

A. Well, I don't know. I have heard his name but I can't recall it, some family, I think, controls it.

Q. Who carried on the negotiations between the applicant and the North American Company in 1930 which resulted in North American's acquisition of a large block of common stock of the applicant?

A. Well, I—the officers and the executive committee.

Q. Did you personally have any contacts with any of [786] the representatives of North American Company? A. No.

Q. In connection with that transaction?

A. No, none whatever.

Q. Well, who reported the progress of those negotiations to the Board?

A. The—when it first came to the Board it was—it had been going on for some time when the first report was made to the Board. The Board was not in very intimate touch with it; those matters were shaped by the executive committee and only came to the Board when they were very well along.

(Testimony of Norman B. Livermore.)

Q. Well, had the transaction practically been consummated at the time you first learned of it?

A. No. It was recommended by the executive committee and the officers and voted on by the Board.

Q. I think you were a member of the applicant's board when the Standard Gas and Electric Company acquired a large block of common stock in 1927, were you not? A. Yes—yes.

Q. Do you recall any assurances given by the Standard Gas and Electric Company at the time it acquired the common stock of the applicant regarding the extent of the participation of the Standard Gas and Electric Company and the affairs [787] of the applicant?

A. Well, the same statement was made that was subsequently made in the case of the North American Company, we would have nothing to do with the control of the company.

Q. Do you know whether or not the assurances given by Standard Gas and Electric Company were reduced to writing?

A. I don't know. No, I couldn't say.

Q. Well, what was your understanding of the assurances given by North American Company at the time it acquired a block of your securities?

A. It was my—my understanding was that it was only a general assurance that there was no intention of trying to displace the California management, and the California management felt that they could

(Testimony of Norman B. Livermore.)

maintain their position and, so far as I know, there was no contract or anything of that kind, but it was simply an assurance and a feeling on the part of the California directors that they certainly could maintain their position very readily.

Q. Do you know whether or not North American Company was requested to reduce those assurances to writing? A. I do not.

Q. Were you, as a member of the Board, apprehensive concerning any future attempt by North American to dominate applicant's affairs?

A. No, I was not. [788]

Q. You knew at that time, did you not, that the North American Company was one of the largest holding companies controlling several large utility properties?

A. Yes, we knew that, knew it was a large company.

Q. But you still thought that it was unnecessary to provide any safeguards against any future domination of the applicant by the North American Company?

A. Yes. We felt perfectly secure.

Q. Did Mr. Black make any representations to the applicant's Board in 1930 regarding the part North American would play if the deal were consummated in applicant's affairs?

A. Not that I ever heard.

Q. Was there any understanding at the time these securities were acquired as to what represen-

(Testimony of Norman B. Livermore.)

tation, if any, North American would have on the applicant's Board and executive committee?

A. I don't remember whether there was any definite understanding on that point or not. It was not —the point was not discussed with me.

Q. Do you recall whether or not North American shortly after the transaction was given representation on your Board?

A. Yes, there was representatives of the North American Company on the Board.

Q. What is the largest number of representations North American has had on your Board since 1930? [789]

A. I can't remember. They never used to come to the meetings so I couldn't say how many they had; two, I think, at least. But as they did not attend the meetings I couldn't say. I never charged my mind with it.

Q. Did you consider Mr. Earl a representative of the North American Company?

A. Well, I really didn't know exactly. I knew he represented some big eastern interest but I didn't —I didn't really pay much attention to it.

Q. Mr. Earl attended meetings of the Board with a fair degree of regularity, did he not?

A. Yes, yes, he did.

Q. So that if Mr. Earl were a representative of the North American Company from the time he became a member of the Board until his death it would be fair to say that North American had an

(Testimony of Norman B. Livermore.)

active representative on your Board, would it not?

A. I suppose so, if he was.

Q. Do you consider Mr. Black as a representative of the North American Company on applicant's Board at the present time?

A. No, I certainly do not.

Q. Has anyone ever indicated to you in any manner that North American did not deem its representation on applicant's Board as important during Mr. Black's presidency [790] as it was deemed during Mr. Hockenbeamer's presidency?

A. I never heard any discussion on that point at all.

Q. How are the proxies for the annual stockholders' meeting selected?

A. I really couldn't say. I have never been in on that.

Q. Do you know who makes up the slate of directors which is included in the proxies' statement circulated to the stockholders when their proxies are solicited?

A. No, I can't say that I do. There's been a great continuity in the Board and I suppose that is governed when the new directors have been elected, that is, when there might be a conference, but I think its mostly a matter of tenor—tenure.

Q. Do you know how the applicant is advised as to who the North American representative will be for the ensuing year prior to the annual stockholders' meeting? A. I do not.

(Testimony of Norman B. Livermore.)

Q. Does Mr. Black sometimes advise the Board as to North American's recommendations when he submits a particular matter to it for its consideration? A. No, he does not.

Q. Does he so advise the executive committee?

A. No.

Q. Has he ever done so? [791]

A. I don't recall any case in which he has.

Q. Since you have been a director of the applicant have you been advised from any source what North American's wishes were in respect to a particular matter?

A. No, I can't think I ever have—don't think I ever have.

Q. Have you, or has any other member of the Board in your presence ever asked Mr. Black what North American's views were on a particular problem?

A. I can't recall—recall anything, I can't recall any particular statement of that kind at all.

Q. What weight would you give to any suggestions which North American might make in view of the fact that that company is the largest stockholder of the applicant?

A. Well, they should have due weight that any stockholder or director should have, they should have that weight that—should be entitled to weight, of course, but they seem to have had confidence in local management, and, as far as I know they have just—the question has not come up.

(Testimony of Norman B. Livermore.)

Q. Did Mr. Hockenbeamer ever acquaint the Board with the recommendations which he received from the North American Company? A. No.

Q. Has there ever been any major difference of opinion between the Board and Mr. Black during Mr. Black's [792] presidency?

A. No. No, there's been no——

Q. Was there any such disagreement during Mr. Hockenbeamer's presidency?

A. There was a difference of opinion about the drop in the dividend. That is the only difference of opinion that I recall, when the dividend was lowered, there was a slight difference of opinion.

Q. How did that matter come to your attention?

A. Well, because I remember it was rather unusual. There was a slight difference of opinion as to whether we should cut the dividend or not and there was some indecision on the part of perhaps some members of the Board or some officers, and there was a matter of considerable discussion, and that's about the only thing of that kind that I remember. Generally the Board has been quite unanimous in their opinions, and, of course, that was also settled by vote.

Q. Were you advised of North American's attitude on the question of dividend reductions prior to the time the dividend was reduced?

A. No, I was not. I did not hear anything about that.

(Testimony of Norman B. Livermore.)

Q. Who later advised you as to North American's views on that subject?

A. I never heard their viewpoint at all. I never knew they had expressed it. [793]

Q. Did you have any communications with any representative of North American Company in regard to Mr. Black's presidency? A. No.

Q. Were any other persons considered for the position?

A. Yes, not very actively, as far as I was concerned, but there were other——

Q. Had Mr. Miller, do you know—scratch that. Do you know whether Mr. Miller had conferred with all the members of the Board prior to the time he communicated with Mr. Black regarding the presidency?

A. I really don't know. I imagine he had, perhaps he had, and my recollection now is that Mr. Elsey was in on that conference. Mr. Elsey—I had forgotten that—Mr. Elsey was in on that conference.

Q. The conference concerning which you testified on the subject of your direct examination?

A. Yes.

Q. Well, how long prior to the time that was communicated with Mr. Miller—with Mr. Black?

A. Yes, that was prior to the communication with Mr. Black. I am quite sure they might have felt him out. I don't think so. I think that was prior.

Q. Do you know who communicated with Mr. Black? [794] A. No, I don't.

(Testimony of Norman B. Livermore.)

Q. Was the possibility that Mr. Black, because of his prior association with North American might be influenced and dominated considerated by the directors present at the meeting which you testified about?

A. Yes, it was considered that—that he, if he came with us, he would be an independent man serving the Pacific Gas and Electric.

Q. And upon what did you rely to reach that conclusion?

A. Well, the—we felt that we were secure in our stock backing for one thing, and I suppose that —I couldn't say the assurance was given that such would be the case, but, of course, that came up on the negotiations, and I felt the—I relied principally upon the fact that we had very heavy support by the public here and we felt secure in our local backing.

Q. Well, did that satisfy you as an assurance that Mr. Black would not look to the North American Company for recommendations and advice if he should become president of the applicant?

A. Yes, it seemed sufficient to me after talking to the members of the executive committee.

Q. Do you know whether or not Mr. Black was requested to give any assurances in regard to that matter before he [795] was selected as president?

A. No, I don't. I couldn't say.

Q. Do you think it would be possible for North American to exercise very much influence or domi-

(Testimony of Norman B. Livermore.)

nation on applicant's policies, even though representatives of North American attended Board meetings or had contacts with Board members?

A. I don't think so. Of course, they might make all sorts of communications to him if they wished to; I don't think he would be influenced because the influence would certainly come out in the meetings if it existed.

Q. I believe you testified that you were acquainted with Mr. Freeman?

A. I just met him once.

Q. And where did you meet him?

A. He attended one meeting of the Board. I met him there.

Q. How frequently have you been in New York since 1930?

A. Oh, I used to go to New York every year. That was many years ago. The time I called on Mr. Black I think I have been there once since then.

Q. Have you only been in the offices of the North American Company in New York once, on one occasion? [796]

A. Yes, the time I called on Mr. Black was the only time I have been in their offices.

Q. And the only other time you have seen any representatives of the North American Company was when they have been in California?

A. At the Board meetings.

Q. Have any major changes occurred in the

(Testimony of Norman B. Livermore.)

operating and financial policies during Mr. Black's presidency?

A. Well, there's been an emphasis on lower rates is the principal thing. Since Mr. Black came he cut rates perhaps a little more freely than the previous management did, done a lot of financing and cutting rates.

Q. Are you familiar with the reports sent by applicant to the North American Company?

A. No, I know nothing about them.

Q. And you don't know what use North American makes of any reports which it might receive from applicant? A. No.

Q. Do you know whether the North American Company has played any part in the formation of applicant's policies in regard to the Hetch Hetchy situation?

A. I don't think so. I never heard it mentioned or no indication of it at all—I don't believe so. That is such a local matter that they couldn't possibly participate in [797] that.

Q. Am I correct in my understanding that you did not know that North American objected to the reduction of dividends on the common stock in 1933? A. No, I didn't know it.

Q. The dividends were increased in 1936, I believe the evidence shows, or restored to their former 8 per cent rate. Was anything said at the meeting at which those dividends were discussed, concerning North American's attitude on the dividends?

(Testimony of Norman B. Livermore.)

A. No. No, I think I would remember that. I am quite sure it was not. I think some of the California directors were absent at the meeting when the dividend was cut, otherwise the dividend wouldn't have been cut.

Q. Were you in favor of the reduction in 1933?

A. It was a little bit—I was against it myself. I think one of our absent California members was against it; if he had been there it wouldn't have been reduced.

Q. Was that Mr. Miller?

A. Yes. I say that—that is not positive; that is just my impression.

Q. Were you in favor of the increase?

A. Yes, I was in favor on the whole of maintaining the dividend. I wanted it—— [798]

Q. Is the increase of dividends usually recommended by the president of the company?

A. That is a matter for the executive committee, first, and the Board; that is not so much a matter for the—of course, his word would be given a great deal of weight. That is a matter that everybody has to get in that is on the Board or on the executive committee.

Q. Now, you have been a director of the applicant since its inception. Can you tell me how N. W. Halsey & Company got the leadership of applicant's early financing?

A. No, I can't. I guess they were, of course, mixed up in a lot of things out here. My recollec-

(Testimony of Norman B. Livermore.)

tion is not very good on that. They were strongly identified with early water power financing when it was in its infancy here, when it was awful hard to finance anything in that line, and I suppose it gave them a little prestige for a while—I couldn't answer that very intelligently. I was——

Q. What do you know about National City Company underwriting a number of applicant's issues from about 1921 to 1931?

A. Well, I practically know nothing, nothing about that.

Q. Are you acquainted with any of the representatives—I mean were you acquainted with any of the representatives of National City Company during that period?

A. No, just a bowing acquaintance, practically.

[799]

Q. Who handled the applicant's financing from 1921 to 1931?

A. Couldn't—I couldn't say. I couldn't recall by dates.

Q. Well, who in the company representing the applicant had charge of such matters?

A. Well, Mr. Hockenbeamer was the man who handled all the financing. There was a period when we financed by preferred stock almost exclusively and that was his idea. It was a pioneer thing in that line and he financed—at the depth of the depression we financed by preferred stock sold over the counter.

(Testimony of Norman B. Livermore.)

Q. In 1930 and 1931, the evidence shows the applicant issued $25,000,000.00, two $25,000,000.00 bond issues. Do you know who determined the amount of those issues?

A. Was that during Mr. Hockenbeamer's presidency?

Q. Yes, I believe he became president in 1927.

A. Well, if he was, if it was while he was president and even before he used to be he was the main guiding spirit in those matters.

Q. Do you recall the circumstances surrounding the matter of the 1935, forty five million dollar issue of applicant's bonds?

A. I can't identify them by dates. I don't identify [800] those issues by dates.

Q. I think that was the first piece of financing under the Securities Act of 1933.

A. Oh, I——

Q. And one of the first large pieces of financing done in the country.

A. Oh, yes; I recall that matter, yes.

Q. Do you recall any discussions which took place at the Board meetings regarding who should head the underwriting syndicate which purchased that forty five million dollar issue?

A. No, there was no discussion at the Board meeting. As I remember, there was some discussion that we heard about at the—in the offices and executive committee, but I think there was no discussion as to who should be the head underwriter;

(Testimony of Norman B. Livermore.)

there was some discussion as to whether we should refinance at all, there was considerable discusion over that ubject.

Q. The evidence shows that a banking house by the name of Lazard Freres headed the syndicate to purchase the forty five million dollar issue of 1935. What do you know about how Lazard Freres come to get that business?

A. Well, I think Mr. Hockenbeamer was responsible for that. He felt that the financing would be most successful [801] under their auspices, and I think his recommendation was paramount in that matter, as far as I know, although I wasn't on the executive committee so it would only come up to the Board as an almost accomplished thing or almost ready to put through.

Q. Do you know whether or not North American participated in the selection of Lazard Freres as syndicate manager of that issue?

A. I never heard anything about that at all.

Q. You don't know with whom, if anyone, Mr. Hockenbeamer consulted in the selection of Lazard Freres? A. No, I do not.

Q. Do you know Mr. Charlie Blyth?

A. Yes.

Q. How long have you known him?

A. Oh, I have known him slightly for a long time.

Q. Are you acquainted with the company with which he is associated, Blyth & Company?

(Testimony of Norman B. Livermore.)

A. Yes. I think of the company as him. I don't know much about the company.

Q. Do you consider Blyth & Company a California underwriting house?

A. Yes, they have New York connections, of course, but they have been identified in California principally and we have so considered them, I have always considered them such. [802]

Q. During 1935 did you participate in any discussion, or were you active in the efforts of Blyth & Company, in attempting to get the leadership of applicant's financing?

A. I didn't hear any of that; I didn't hear anything about that.

Q. Did any representative of Blyth & Company ever approach you in 1935 or 1936 in an effort to get applicant's business for Blyth & Company?

A. No, I was not approached by them. I was approached by two or three houses after the underwriting was set, they wanted to participate in it, but after the terms were set and the syndicate managers were selected Blyth never approached me at all.

Q. The people who approached you merely wanted to participate——

A. (Interposing) Participate in something that was set up already.

Q. Was that headed by Blyth & Company or Lazard Freres & Company?

(Testimony of Norman B. Livermore.)

A. I couldn't remember some of the—it might have been either—they spoke to me about it.

Q. The first piece of financing after Mr. Black became president of the applicant was a ninety million dollar issue sold in March, 1936, to a syndicate headed by Blyth & [803] Company. What do you know about the reasons why Blyth & Company succeeded Lazard Freres as the syndicate manager of that—of applicant's financing?

A. Well, we—it was considered that Blyth was a California organization primarily, which was a thing in their favor, and it was considered that the results of the financing would be more satisfactory under their leadership and that was as far as my vote went; that was paramount in the situation.

Q. Was consideration given Blyth & Company as syndicate manager by the Board of which you were a member? A. Yes.

Q. Who would you say was responsible for Blyth & Company getting the leadership as manager of the 1936 syndicate issue?

A. I don't know as anyone was responsible, it was a matter of discussion among those in the executive committee who had a great deal to do with such issues, and I presume they discussed it. It was perhaps a joint conclusion. That would be my general impression.

Q. Were all the members of the executive committee of the opinion that Blyth & Company should have the business rather than Lazard Freres & Company? A. Yes, I think it was unanimous.

(Testimony of Norman B. Livermore.)

Q. The evidence shows that Dillon Read & Co.—and Company, had a substantial participation in the March, 1939, [804] issue. Do you know how that firm got a membership in that syndicate?

A. No, I don't. I didn't know they had a participation.

Q. Did you, or to your knowledge, did any member of the executive committee in 1936 confer with any representatives of the North American Company regarding the syndicate manager?

A. As far as I know, no; I certainly did not.

Q. Do you know whether North American Company had anything to do with Dillon Read's getting a substantial participation in the March, 1936, issue?

A. I couldn't say.

Q. In your opinion is Mr. Black more amenable to suggestion from members of the executive board than Mr. Hockenbeamer was?

A. I wouldn't say that, I would say that both were amenable. I never made such a comparison.

Q. Do you know why Dillon Read & Company did not participate in the May and October, 1936, financings of the applicant?

A. No, I don't—I don't know.

Q. What part, if any, has North American Company played in the formation of the financial policies of the [805] applicant?

A. As far as I know, no part at all, that I have heard of.

Miss Calkin: I think that is all.

(Testimony of Norman B. Livermore.)

The Examiner: Any further questions, Mr. Phleger?

Mr. Phleger: Yes, just two questions.

Redirect Examination

By Mr. Phleger:

Q. Mr. Livermore, would you give any greater weight to the views of North American Company as a stockholder than to the views of any other substantial stockholder?

A. No, I think I—of course, there are certain members on the Board that have a certain number of votes, they are entitled to vote, that's all.

Q. You testified that you had met Mr. Freeman once. The record shows that Mr. Freeman has never been in the state of California.

A. Then I am mistaken. I thought I met him at the Board.

Q. You confused him with Mr. Doolittle, perhaps, who attended one meeting.

A. Well, I don't remember Mr. Doolittle at all, and I thought I remembered Mr. Freeman. I still think he was at one meeting, if it was just one meeting. I remember how he looks. [806]

Miss Calkin: Did Mr. Black introduce you to any members of North American Company when you called on him in New York?

The Witness: No, no—I just had a little chat with him in his own office.

Miss Calkin: That is all.

(Testimony of Norman B. Livermore.)

Mr. Phleger: No further questions.

The Examiner: You may be excused, Mr. Livermore. Thank you very much.

(Witness excused)

The Examiner: Have you another witness now, Mr. Phleger? Or do you want to have Mr. Beckett return?

Mr. Phleger: I suggest we have a recess now for a little while.

The Examiner: Yes, we will have a short recess now at this time.

(Whereupon a brief recess was taken, after which proceedings were resumed as follows:)

The Examiner: Are you ready now for Mr. Beckett? Or do you have another witness?

Mr. Phleger: No, no; Mr. Beckett.

The Examiner: You have completed your direct examination?

Mr. Phleger: Yes, but I would like to resume it to ask one or two more questions.

The Examiner: All right. You have already been sworn, Mr. Beckett. You may resume the witness chair. [807]

Mr. Beckett: Yes.

E. J. BECKETT,

produced as a witness for and on behalf of the Applicant, having been previously duly sworn, testified further as follows:

Direct Examination
(Resumed)

By Mr. Phleger:

Q. Mr. Beckett, in your previous testimony you identified certain statements which you said that under the direction of Mr. Black you forwarded to Mr. Freeman of the North American Company?

A. Yes.

Q. Since you left the stand you have called my attention to an additional form which I will offer in evidence as applicant's exhibit next in order, which is headed "Statistical statements, October, 1940, prepared by department of vice-president and executive engineer, Pacific Gas and Electric Company."

The Examiner: That will be received, in the absence of an objection, as applicant's Exhibit 45.

(The form referred to above was marked Applicant's Exhibit No. 45, and was received in evidence.)

By Mr. Phleger:

Q. I show you Exhibit 45 and ask you if you will [808] explain what it consists of.

A. This statement contains a summary showing the customers served by the company as of the end

(Testimony of E. J. Beckett.)

of the month, and the gain in customers by geographical divisions of the company.

It also shows the kilowatt hours sold to the company's customers in each of its major divisions; shows the revenues of the electric and gas departments, divided by major revenue accounts, and the kilowatt hour sales classified by major revenue accounts; also similar information with respect to the gas department.

Q. Now, has this form of statistical statement been made up for many years?

A. It has, yes.

Q. It's made up monthly?

A. Made up monthly.

Q. Are a number of copies of it made and sent out to different departments of the company?

A. Yes.

Q. Does it contain any other information other than is contained in other statements, submitted by the president to the Board of Directors and executive committee?

A. No, excepting that possibly there is a trifle greater or more detailed segregation of major revenue accounts. I am not entirely clear on that. There used to be a somewhat [809] larger detail than is contained in some of these other statements which are furnished regularly with the income statements.

Q. This report is made up, is it not, in the office of vice-president and general manager?

(Testimony of E. J. Beckett.)

A. In the office of vice-president and executive engineer.

Q. And executive engineer? Copies of it are sent throughout the system, are they not?

A. They are, to the various divisions, and to the sales representatives.

Q. And you monthly forward a copy of this regular company statistical report on to Mr. Freeman, do you? A. That is right.

The Examiner: Do I understand this report is somewhat lacking in detail in respect to the distribution than the regular financial data?

A. I am not quite sure at the present time, Mr. Examiner, if such is a fact; at one time it was a fact, it was intended primarily for the information of division managers so that they could tell how their divisions were coming along. Most of that data, and I think possibly most all of it, is principally incorporated in the income statements which are submitted to the executive committee and [810] Board of Directors.

Q. If there is any greater detail in here it is primarily because of the fact it was for the use of the president to take in to the executive meetings?

A. That is correct. And I think the reports are identical.

By Mr. Phleger:

Q. Mr. Beckett, do you know whether the president takes that statement into meetings of the executive committee and the Board of Directors

(Testimony of E. J. Beckett.)

from which it gets certain information off the reports?

A. The first two pages generally are of statistics which are submitted by the president in his reports to the executive committee, that is, the statement of customers; those two pages constitute the consumers' statement. The remaining pages are not because of the duplication of information contained in the reports already submitted to the committee.

Q. As a matter of fact, he physically takes a copy of that report in with him, does he not?

A. Yes.

Q. And reads from the first two pages?

A. Why, I imagine he comments on it. I am not present at the meetings, of course, and I don't know what [811] he does.

Mr. Phleger: That is all.

The Examiner: Cross examine, Miss Calkin?

Cross Examination

By Miss Calkin:

Q. Mr. Beckett, I believe you testified that in connection with your duties you assisted in the preparation of the annual stockholders' report?

A. Yes.

Q. By whom is the first draft of that report prepared? A. By me.

Q. And what do you do with it?

A. After it is drafted I submit it to Mr. Black for his approval and suggestions, changes.

(Testimony of E. J. Beckett.)

Q. You get the information which is incorporated in that report in other departments of the applicant? A. That is right.

Q. Do you send a copy of the draft of the stockholders' report to the North American Company?

A. No.

Q. Do you know whether or not Mr. Black does?

A. No, he does not.

Q. In what form is the annual stockholders' report when it is sent to the North American Company? [812]

A. In the same form in which it is submitted to all stockholders and they get it at the same time. In other words, the North American Company is on our mailing list the same as any other stockholder to receive annual statements or interim earning statements such as are furnished to the various stockholders, and we do not, to my knowledge, even send them a special copy from our office. They are simply on the regular mailing list.

Q. In other words, they receive the final draft after it's printed and in final form?

A. That is right.

Q. And approved by the Board of Directors?

A. That is right. [813]

Q. What reports, if any, do you send regularly or irregularly to the North American Company which are not submitted to the Board of Directors or to the Executive Committee?

(Testimony of E. J. Beckett.)

A. The only reports, I think, are those that I referred to this morning; the statistical report, which is furnished by all member utilities to the Edison Electrical Institute, a copy of that monthly statement is furnished to the North American Company.

Q. You have examined Applicant's Exhibit No. 33, have you not?

A. I don't know it by number. I looked at the summary page this morning.

Q. Will you look at it again and tell me if Applicant's Exhibit No. 33, together with Applicant's Exhibit No. 45, includes sample copies of the reports sent by the Applicant to North American Company of which you have knowledge?

A. That list appears to me to be complete.

Q. Do you have any information as to the amount of intangibles included in the utility plant account of the Applicant?

A. No. I have really nothing to do with that.

Q. Would that be under Mr. Hodges' jurisdiction? A. Yes.

Q. Is Applicant's Exhibit No. 45 prepared primarily for use by the different departments and divisions of the [814] Applicant?

A. That was the primary purpose of its compilation, yes. It was prepared, as I recall it, long before the North American acquired any stock interest in this company.

Q. How did you happen to start sending a copy

(Testimony of E. J. Beckett.)

of Exhibit No. 45 to the North American Company?

A. I think that originally Mr. Hockenbeamer had me send this statement, as Exhibit No. 45, monthly with the income statements of the company to Mr. Black before Mr. Black became president of the company, and I continued that practice after Mr. Black became president by sending them to Mr. Freeman.

Q. What reports, if any, are now being furnished to the North American Company which were not furnished to it during Mr. Hockenbeamer's presidency? A. None to my knowledge.

Miss Calkin: Mark these (indicating) in the order in which they are arranged for identification.

(The photostatic copies of letters referred to were marked Commission's Exhibit No. 19 to 28 inclusive for identification.)

By Miss Calkin:

Q. Mr. Beckett, I hand you what has been marked for purposes of identification as Commission's Exhibits Nos. 19 to 28 inclusive and I will ask you if you can [815] identify those documents?

A. Do you wish me to read them off or merely identify them as a group?

Q. As a group. Are those documents copies of correspondence carried on between you and Mr. Freeman of the North American Company?

A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 19 to 28 inclusive.

(Testimony of E. J. Beckett.)

Mr. Phleger: No objection.

The Examiner: Without objection they will be received in evidence.

Commission's Exhibit No. 19 is a letter dated December 7, 1937, signed by Herbert C. Freeman, on the letterhead of the North American Company, directed to Mr. Beckett, Assistant Treasurer of the Pacific Gas and Electric Company.

Commission's Exhibit No. 20 is a copy of a two-page letter dated December 20, 1937, without a signature, bearing the initials "EJB," directed to Mr. H. C. Freeman, Vice-President of the North American Company.

Commission's Exhibit No. 21, a letter dated December 27, 1937, on the letterhead of the North American Company, to Mr. Beckett from Herbert C. Freeman.

Commission's Exhibit No. 22, a copy of a letter of December 30, 1937, without signature, apparently from the [816] assistant treasurer, with the initials "EJB," to Mr. H. C. Freeman, vice-president of the North American Company.

Commission's Exhibit No. 23, a letter of January 4, 1938, on the letterhead of the North American Company, to E. J. Beckett from Herbert C. Freeman.

As Commission's Exhibit No. 24, a copy of a letter on the letterhead of the Pacific Gas and Electric Company, dated May 18, 1938, from E. J. Beckett, assistant treasurer, to Mr. H. C. Freeman.

(Testimony of E. J. Beckett.)

As Commission's Exhibit No. 25, a letter of October 7, 1938, from E. J. Beckett, assistant treasurer, to Mr. H. C. Freeman. As Commission's Exhibit No. 26, a copy of a letter signed by H. C. Freeman, vice-president, dated November 12, 1938, to E. J. Beckett, assistant treasurer, Pacific Gas and Electric Company.

As Commission's Exhibit No. 27, on the letterhead of the Pacific Gas and Electric Company, a letter of September 1, 1939 to Mr. H. C. Freeman from E. J. Beckett.

As Commission's Exhibit No. 28, a letter on the letterhead of the Pacific Gas and Electric Company, dated September 15, 1939, to Mr. H. C. Freeman from E. J. Beckett, assistant treasurer.

(The photostatic copies of letters referred to were marked Commission's Exhibits Nos. 19 to 28 inclusive and were received in evidence.)

[817]

By Miss Calkin:

Q. Mr. Beckett, do you frequently receive letters from Mr. Freeman regarding the reports which you submit to him?

A. Not very frequently; no. I do occasionally.

Q. Can you describe generally the nature of the communications from Mr. Freeman to you regarding such reports?

A. They are so infrequent that it is hard to generalize on them. I would say that these exhibits here are typical of inquiries that I might get or the letters that I might get from him.

(Testimony of E. J. Beckett.)

As a matter of fact, outside of purely routine letters of transmittal from my office there is very little correspondence between me and Mr. Freeman.

Q. Does Mr. Freeman, in corresponding with you, generally ask an explanation of some matter included in the reports?

A. That would be the general purpose of his letters on the few occasions that he writes; yes.

Q. Have you ever met Mr. Freeman?

A. Yes.

Q. I believe you testified to that on your direct examination.

A. No, I don't think I was asked.

Q. How frequently have you seen Mr. Freeman?

[818]

A. I met him in New York, on one occasion.

Q. Have you ever talked to Mr. Freeman over the telephone? A. No.

Q. Have you ever sought the advice of the North American Company in connection with any of your duties relating to the Applicant? A. No.

Q. Have you ever received such advice from the North American Company? A. No.

Miss Calkin: I think that is all.

Redirect Examination

By Mr. Phleger:

Q. Mr. Beckett, is it fair to state that outside of the letters accompanying the various documents which you have sent from time to time to Mr. Free-

(Testimony of E. J. Beckett.)

man, and as to which you have just testified, that these exhibits, Commission's Exhibits 19 to 28, inclusive, include substantially all of the correspondence you have had with him?

A. I believe that is true.

Q. That is to say, 4 letters, 2 from you and 2 to you in December 1937, one to you in January 1938, one from you in May 1938, one from you in October 1938, one to you in November 1938, and 2 from you in September 1939, is that [819] correct?

A. I think that covers all of them.

Mr. Phleger: That is all.

The Examiner: Any further questions, Miss Calkin?

Recross Examination

By Miss Calkin:

Q. You don't mean, Mr. Beckett, that during the past ten years that the letters introduced in evidence as Commission's Exhibit 19 to 28, inclusive, are all of the correspondence that you have had with the North American people, do you?

A. I think that they constitute all of the letters beyond, as I have stated, purely routine letters of transmittal in which I may have perhaps explained certain things in connection with our income statements possibly, or in connection with the new classification of accounts, things of that type; or rate changes, transmitting changed gas and electric rate schedules I might have generalized on what they included.

(Testimony of E. J. Beckett.)

Q. You have written North American some sort of a letter every time you have sent them a report, have you not? A. That is true.

Mr. Phleger: He testified routine letters of transmittal are excluded in the statement, as I understood it. [820]

By Miss Calkin:

Q. Haven't there been occasions when you have explained the matters contained in certain reports by correspondence with Mr. Freeman other than the letters represented by the documents introduced in evidence?

The Examiner: And such routine letters as you testified to?

The Witness: I can't reply directly to that. If they ask any questions I would reply to them naturally. As I say, sometimes I explain things without any specific request from them.

By Miss Calkin:

Q. In other words, you wouldn't say that those letters which have been introduced as Commission's Exhibit 19 to 28 inclusive constituted all of the correspondence between yourself and Mr. Freeman since 1930?

Mr. Phleger: Other than routine letters.

A. Other than routine letters, just such as I have described, I think they do. I haven't gone through our files since 1930 to see if I had any further correspondence with Mr. Freeman. I haven't checked, but I have no knowledge of anything be-

(Testimony of E. J. Beckett.)

yond, as I have stated, routine letters of transmittal, or explanations of matters connected with the material when transmitted.

Miss Calkin: I think that is all. [821]

Mr. Phleger: That is all.

The Examiner: You may be excused.

(Witness excused)

Mr. Phleger: Mr. Coghlan.

Whereupon—

JOHN P. COGHLAN

was produced as a witness for and on behalf of the Applicant, and having been first duly sworn, was examined and testified as follows:

The Examiner: Will you give the reporter your full name?

The Witness: John P. Coghlan—C-o-g-h-l-a-n—2813 Scott Street, San Francisco.

Direct Examination

By Mr. Phleger:

Q. Mr. Coghlan, will you give your name for the record?

The Examiner: He has already given his name and address.

By Mr. Phleger:

Q. How long have you lived in California?

(Testimony of John P. Coghlan.)

A. I was born in California, born in Nevada County, and came to San Francisco when I was 14 years of age.

Q. When did you enter the employ of the Pacific Gas and Electric Company? [822]

A. In March 1906; I think it was March 1, 1906.

Q. Before you became connected with the company what was your occupation?

A. Well, I came to San Francisco when I was 14 years of age and I went to work in a newspaper office as office boy; later became a newspaper reporter; still later a reporter of the courts and city departments for the newspaper; and while there I studied law and was admitted to the bar. I practiced for a short time with Mr. Charles A. Lee, now deceased, and in 1904 I was appointed Assistant City Attorney under Percy B. Long, then City Attorney.

I served two years in the City Attorney's office, and then was associated for a short time with Mr. Long and Mr. John S. Partridge, now deceased, and who was later a Federal District Judge.

I left that last association to join the Pacific Gas and Electric Company as a junior attorney in the law department, having charge of claims and damage matters.

Q. State what various positions you have held with the company since you entered its employ in 1906?

A. I was for a number of years in charge of

(Testimony of John P. Coghlan.)

claims and damages, and in charge of matters before the Industrial Accident Commission, and in charge of safety matters.

I organized the safety organization, which is still in effect in the company. [823]

In 1923, upon the death of Mr. John A. Britton, there was some reorganization within the company and Mr. W. E. Creed, then president, made me his assistant, with the title of Assistant to the President.

When Mr. Creed died in 1927 Mr. Hockenbeamer, who was then secretary and vice-president and treasurer, was made president and I was made second vice-president with the title of Second Vice-President and Assistant to the President.

The duties of the treasurer were transferred to Mr. Foote, Third Vice-President.

Q. What are your duties in your present position?

A. I have largely to do with taxes and employee relations, publicity, public relations and contracts with governmental departments.

Q. During your service with the company have you acted as an officer of the court in connection with any receivership matters?

A. In 1914 I was appointed by the Federal District Court receiver of the property of the North Electric Company. That was a railway operating between Sacramento and various points, cities and towns in the Sacramento Valley, with properties

(Testimony of John P. Coghlan.)

valued at about $10,000,000, and an annual income of about $1,125,000, and with about 600 employees.

I managed that property as receiver for four years, [824] turning the property over in 1918 to a re-organization company, which later transferred the property to the Western Pacific Railway.

Q. Have you had anything to do with the formulation of the company's pension plan?

A. Yes; in 1921 I was chairman of the committee that revised the then voluntary pension plan of the company and in 1936 I was chairman of the committee that redrafted the pension plan and established the contributory retirement plan which is now in effect.

Q. When were you first elected a director of the company?

A. I was elected a director April 8, 1930, on recommendation of Mr. Hockenbeamer.

Q. How long did you continue?

A. I served until June 18, 1930, as I remember, when I resigned at the suggestion of Mr. Hockenbeamer because at that time 3 directors were about to be elected as a result of the acquisition of the Great Western and San Joaquin properties by the Pacific Gas and Electric Company.

Q. When were you again elected as a director?

A. I was re-elected a director on August 26, 1931 to succeed Charles H. Dickey, deceased, and I have been a director ever since.

Q. Are you a director of any subsidiary company— [825] strike that.

(Testimony of John P. Coghlan.)

Are you a director of any companies in which the applicant owns stock?

A. I am a director of the Vallejo Electric Light & Power Company, in which the Pacific Gas and Electric Company is a stockholder, a minority stockholder.

Q. Are you a director of any other companies in which the Applicant owns stock?

A. I am a director in the Arlington Properties Company, which is a company that holds non-operating real estate for the Pacific Gas and Electric Company.

Q. Do you own any stock in the Applicant?

A. Yes. Either alone, or in joint tenancy with my wife, I own 1350 shares of preferred stock and 1480 shares of common. With other members of my family I think I own 3240 shares of stock. Including the stock I have referred to myself and family, members of my family, own 3240 shares of stock.

Q. Have you owned stock of the company for a considerable period?

A. I made my first purchase of stock in 1906 as I recall it.

Q. You have been a stockholder ever since?

A. Yes.

Q. Do you own any stock in the North American Company? [826] A. No, I do not.

Q. Have you ever owned any stock in it?

A. No, I have not.

Q. Do you own any stock or securities in any

(Testimony of John P. Coghlan.)

affiliated or subsidiary company of the North American Company?

A. I do not, and never have.

Q. Have you attended meetings of the Board of Directors regularly since your election?

A. Yes, I have.

Q. Do you also attend meetings of the Executive Committee of the Company?

A. Yes; as one of the officers invited to sit with the Executive Committee, I do.

Q. Do you freely speak at both meetings of the Executive Committee and at the Board of Directors on matters on which you have an opinion?

A. I do.

Q. In your opinion does any director of the company dominate the meetings of either the Board of Directors or of the Executive Committee?

A. I should say not.

Q. In your opinion do the members of those two bodies freely and fully discuss all matters coming before them? [827]

A. They do. That is particularly true in the Executive Committee where matters are discussed at considerable length.

Q. Were you acquainted with Frank Dame during his lifetime?

A. Casually. I first met him at a convention of the National Electric Light Association late, in the late twenties.

(Testimony of John P. Coghlan.)

Q. Were you acquainted with Mr. Edwin Gruhl during his lifetime?

A. In about the same way and to the same extent.

Q. Were you acquainted with Mr. F. W. Doolittle?

A. I know Mr. Doolittle. I met him several times.

Q. Do you know Mr. James F. Fogarty?

A. Yes. I know him, met him several times.

Q. Have you ever met Mr. Freeman?

A. I don't recall ever having met Mr. Freeman.

Q. Did you ever discuss with any of the gentlemen that I have just named the affairs of the Pacific Gas and Electric Company?

A. Only in a general way. I never discussed any business matters with them for purposes of decision or anything of that sort.

Q. Have any of these men just named ever made any suggestions to you as to your action as an officer or a [828] director of the Applicant?

A. None of them ever have done so.

Q. Have you ever had any communications with these gentlemen by telephone, mail or otherwise, with respect to Pacific Gas and Electric Company affairs?

A. I have had some casual correspondence with Mr. Fogarty and with Mr. Doolittle, but about annual reports and pamphlets and addresses that were sent to me.

(Testimony of John P. Coghlan.)

Q. How long have you known Mr. Black?

A. At least 20 years.

Q. Did you know him when he was connected with the Great Western Power Company in an executive capacity?

A. Yes. When I first knew him he was Sales Manager of the Great Western Power Company, and then I knew him later as General Manager and Vice-President of the Great Western Power Company.

Q. During the period between 1930 and 1935, when Mr. Black was in New York, did you see him?

A. Yes, I saw him a few times. I should say I was in New York in that period two or three times making visits either on vacation or to the convention of the National Electric Light Association.

Q. Did you see him also when he came to San Francisco on his annual or semi-annual visits? [829]

A. I recall seeing him about the time the negotiations were under way for the acquisitions of the Great Western and San Joaquin properties. I don't recall seeing him at other times, though I probably did see him.

Q. Have you ever discussed with Mr. Black, prior to his becoming president of the company, affairs of the Pacific Gas and Electric Company other than in a rather perfunctory way?

A. Only in a general way. Mr. Black asked for information about matters that were pending, and

(Testimony of John P. Coghlan.)

sometimes asked questions about the Hetch Hetchy situation, matters of that kind, generally asking for information.

Q. Prior to 1935, when Mr. Black became president, did he ever communicate to you the views of the North American Company with respect to pending matters with the suggestion as to what their attitude was?

A. No; he never did, and never made any suggestion on behalf of the North American Company to me.

Q. Were you acquainted with Mr. Guy C. Earl during his lifetime?

A. Yes; I knew Mr. Earl for many years.

Q. Did you ever discuss Pacific Gas and Electric Company matters with him, other than in directors' meetings?

A. In meetings of the Executive Committee and once in a while he would drop into my office and ask questions [830] about matters that were pending.

Q. Did he ever attempt to influence your action as an officer or director of the company?

A. No, he never did, except once in connection with the dividends that have been mentioned here. He spoke to me about that.

Q. State, if you will, your recollection of the action of the directors in 1933 when the dividend was reduced from 8 per cent per annum to 6 per cent?

(Testimony of John P. Coghlan.)

A. I was present at the meeting of the Board of Directors at which that matter came up. As I recall the incident, Mr. Hockenbeamer discussed the earnings and the earning statement and generally reviewed the dividend situation, and recommended that the dividend be declared in the usual amount of 50 cents.

Mr. Anderson raised a question about that and said that he had discussed the matters, as I recollect, with Mr. Hockenbeamer, and Mr. Hockenbeamer had a different opinion either earlier in the day or a few days before, and Mr. Hockenbeamer said that he had had a different opinion but that he believed the dividend could be declared at that time and that possibly we could consider a reduction at a later date, at the next dividend date.

There was then some discussion about the earnings and, as I recall it, there was a showing in the earning statement [831] that there was a downward trend in earnings, and finally Mr. Anderson moved that the dividend be made 37½ cents instead of 50 cents.

I think Mr. Elsey seconded the motion, and the motion was put and carried.

Mr. Earl was present at the meeting. I don't recall that he said anything about it. But he left the meeting rather hastily and the next morning he dropped into my office and said he had come to see Mr. Hockenbeamer, and that his New York principals—I believe he mentioned Mr. Dame—had com-

(Testimony of John P. Coghlan.)

municated with him and that they were disturbed that the dividend had been reduced without notice to the North American Company and he, Mr. Earl, had been asked to obtain a reconsideration, and he asked me what I thought about it. I told him I thought the incident was closed and over with. He said he was going in to talk to Mr. Hockenbeamer about it.

He did leave my office and later in the day Mr. Hockenbeamer told me Mr. Earl had talked to him about it and had said that Mr. Dame wished the matter reconsidered, but that he, Mr. Hockenbeamer, didn't see there was any chance for reconsideration.

Q. Other than that you do not recall any instance in which the attitude of the North American on any matter, either prospective or retrospective, was brought to your attention? [832]

A. No, I do not. Mr. Earl never asked me about my other matter in behalf of the North American Company or any other representative of the North American Company never asked me.

Q. Mr. Coghlan, you were a director of the company, were you not, at the time that it acquired from North American the holdings of Western Power Company and Great Western Power Company of California, and the San Joaquin Light and Power Company?

The Examiner: May I interrupt? Is this a different subject than that of the dividend situation?

(Testimony of John P. Coghlan.)

Is this going to be a long series of questions? I ask because we had an agreement some days ago, and renewed later, that we would recess promptly at 4:00 o'clock so these gentlemen could attend their meeting, their Executive Committee meeting.

Do you want to go on for a while?

Mr. Phleger: Off the record.

(Remarks off the record.)

The Examiner: On the record.

Mr. Phleger: I will withdraw the question.

The Examiner: It can be read to the witness in the morning.

We will recess now until 10:00 tomorrow morning.

(Whereupon, at 4:00 p. m. an adjournment was taken to Wednesday, November 20, 1940, at 10:00 a. m.) [833]

Proceedings

The Examiner: Are you ready?

Mr. Phleger: Yes.

The Examiner: Mr. Coghlan.

Mr. Phleger: I wonder if, as a matter of convenience to Mr. Palmer and a witness who will succeed him, it is agreeable to the Examiner to put Mr. Palmer on.

Miss Calkin: Yes.

The Examiner: It is all right with me. Mr. Cogh-

(Testimony of John P. Coghlan.)

lan, I understood, wanted to finish up as soon as he could, or, at least, he wanted to last night.

Mr. Black: Mr. Palmer said he had the time.

Mr. Phleger: All right. Suppose, then, we proceed.

The Examiner: Whichever you want is all right with me.

Have the record show Mr. Coghlan has already been sworn.

Whereupon—

JOHN P. COGHLAN

was produced as a witness for and on behalf of the Applicant, and having been previously duly sworn, testified further as follows:

Direct Examination
(Resumed)

The Examiner: Mr. Phleger, do you want that last question that you propounded read this morning? [836]

Mr. Phleger: Yes, please.

(The question referred to was read by the reporter as follows:

"Q. Mr. Coghlan, you were a director of the company were you not, at the time that it acquired from North American the holdings of Western Power Company and Great Western Power Company of California and the San Joaquin Light & Power Company?")

(Testimony of John P. Coghlan.)

A. I think not. I think I was elected a director in April, April, 1930, and the contract acquiring the Great Western and San Joaquin was made in March, if my recollection is correct.

By Mr. Phleger:

Q. I think that is correct, so that you have no direct knowledge yourself, then, of the action of the Board of Directors in connection with that transaction? A. No, I have not.

Q. Are you a director of the Vallejo Light & Power Company? A. Yes, I am.

Q. How long have you been such a director?

A. I have a memorandum here to which I will refer. (Examining document) I was elected a director on June 28, 1930, at which time Thomas J. Shaub, our general attorney, and myself were elected directors of that company. [837]

Q. Now, how many directors has the company?

A. The company has five directors.

Q. Who are the other three directors?

A. Dr. E. J. Casper and his two sisters, Mrs. Irma Casper Silverstein and Mrs. Mattye Casper Rosenberg.

Q. What percentage of the outstanding stock of that company is owned by the Pacific Gas and Electric Company? A. 45.83 per cent.

Q. And what interest or interests own the remainder of the stock?

A. Dr. Casper and his two sisters own the remainder of 54.17 per cent.

Q. To what extent does the Pacific Gas and Electric Company participate in the formulation

(Testimony of John P. Coghlan.)

of the policies and participate in the management of that company?

A. That company is really a family company. Under our minority interest we have little or nothing to do with the policies. We have one stockholders meeting a year and three or four directors meetings and at the directors meeting Dr. Casper usually reports upon earnings and upon business possibilities and sometimes upon rate problems and that is about all. He carries on the company largely in his own way.

Q. Does the Pacific Gas and Electric Company participate other than as a minority stockholder in the business [838] or affairs of the Vallejo Company? A. No, it does not.

Q. Does the Vallejo Company own any properties outside the State of California?

A. No, it does not. The properties are confined to the City of Vallejo and a small area around the city.

Q. Have you ever at any time or in any connection observed anything indicating that the Pacific Gas and Electric Company is or was controlled directly or indirectly by the North American Company or that the management or policies of the Pacific Gas and Electric Company are or were subject to a controlling influence directly or indirectly by the North American Company?

A. No, I have not.

Q. If the North American Company were to attempt directly or indirectly to control or to exercise a dominating influence over the management or

(Testimony of John P. Coghlan.)

policies of the Pacific Gas and Electric Company would you, as a director, oppose such attempts?

A. I would, because I would believe it not to be to the best interests of the Pacific Gas and Electric Company.

Q. Do you think that the other directors of the Applicant, with the exception of Mr. Fogarty and Mr. Freeman, would also oppose such attempts? [839]

A. I believe they would. They are all Californians with very strong local California interests.

Q. In the event that the North American Company were to attempt to control or exercise a dominating influence over the management or policies of the Pacific Gas and Electric Company, do you think it would be able to do so?

A. I do not think it would be.

Q. Why?

A. Well, I think first because of the great number of stockholders in California, of the great local interests, because of the connections of these various directors, and I also have no reason to believe that any great number of the eastern stockholders would follow the North American rather than the western directors and western management.

Q. If the North American Company were to attempt to secure sufficient proxies to obtain a majority of the representation at a stockholders meeting and such an attempt were resisted by the management and the San Francisco directors of the

(Testimony of John P. Coghlan.)

Pacific Gas and Electric Company, do you think that the North American Company would be successful in its attempt?

A. I think it would not be.

Q. And what are the reasons for your conclusion?

A. Well, the reasons that I have stated that apply to the other question, that I think the stockholders have [840] faith in the western management and in the western directors, and I feel that the western directors have such widespread connections that they would control—be able to control a great number of stockholders and the majority of the stock.

Mr. Phleger: That is all.

The Examiner: Cross examine.

Cross Examination

By Miss Calkin:

Q. Mr. Coghlan, you testified that you, in connection with your duties with the company, formulated, or, at least, worked on a pension plan that is now in effect? A. Yes.

Q. In connection with the formulation of that plan and the work that you did on it in 1936, did you have any contacts with the North American Company? A. None at all.

Q. Can you tell me when the North American Company acquired its present interest in the Vallejo Electric Light & Power Company?

(Testimony of John P. Coghlan.)

A. You mean when the Pacific Gas & Electric Company——

Q. Yes, when the Applicant——

A. (interposing) In 1929—I don't have the exact date—but in 1929 Pacific Gas and Electric Company purchased its interest in the Vallejo Electric Light & Power [841] Company.

Q. From whom did it acquire its interest?

A. It purchased the interest from the Rosenberg and Adler families who were relatives, either cousins, uncles, or aunts of the Casper family.

Q. Does that company have only one class of stock outstanding?

A. Only one class of stock outstanding, that is all. At the present time it has 10,000 shares of a capitalization of a hundred thousand, and after considerable discussion application has been made to the usual authorities to increase the capital to 60,000 shares at a par value of $600,000. Proceedings are now pending. That will result in more certificates or more paper to the various stockholders.

Q. But you don't contemplate the sale of any additional stock?

A. No. The plan of the Casper family is to issue the stock, or part of it, to the existing stockholders in due proportion.

Q. But not for any additional consideration?

A. No.

Q. And as a director of the Vallejo Company you have no contact with that company other than at directors meetings?

(Testimony of John P. Coghlan.)

A. That is all. Once in a while I see Dr. Casper [842] on the street or talk to him on the telephone on some matter that he would consult me about.

Q. Who, among the directors of the Vallejo Electric Light & Power Company are most active in the management of that company?

A. Dr. Casper is entirely active. He is the president and general manager and operates the company entirely.

Q. Did that family organize the company originally?

A. Yes, the company was organized on June 18, 1897 by K. Casper, the father of these children. When he died some years ago his son, Albert Casper, was the manager for many years. Albert Casper died after we acquired our interest and Albert Casper's interest and the interest of Albert Casper's mother passed to the three children who now control the property, Dr. Casper and his two sisters.

Q. Then, is it correct to say that the Casper family organized the company and have been in active charge of the management ever since it was organized?

A. Ever since it was organized, that is true.

Q. Do you know Mr. Shea?

A. No, I do not.

Q. To what extent have you discussed the affairs of the Applicant with Mr. Fogarty on the occasions that [843] you have seen him?

A. Only in a very general way. Generally he

(Testimony of John P. Coghlan.)

has asked some questions about the company and I have answered his questions, given him some information that he has asked for, all in a general character.

Q. How many times have you seen the representatives of the North American Company in New York?

A. I should say that I have been in New York five or six times in the last 10 or 12 years.

Q. Why do you believe that the control of the Applicant by the North American Company would be against the best interests of the Applicant?

A. Well, I believe a holding company control is not of the best advantage to a corporation like ours. I believe that our corporation has an unusual standing in California, as a California corporation, controlled by Californians and that its long identity with California would be injured by control of any eastern influence.

Q. Was your salary increased shortly after Mr. Black became president of the company?

A. It was increased sometime after he became president; I don't know just when.

Q. Do you know whether or not the North American Company had anything to do with the increase?

A. No, I am sure it did not. I think—I hope it [844] was earned.

Q. Well, you never requested any representatives of the North American Company for the increase? A. No, I did not.

(Testimony of John P. Coghlan.)

Q. You have never been associated with the Western Power Corporation or any of its subsidiaries? A. No, I was not.

Q. During your association with the Applicant who would you say have been the most dominant persons in its organization?

A. In its organization or in the Board of Directors?

Q. In the entire organization. Who would you say has been the most dominant?

A. Well, I wouldn't say that in the directors any particular man is dominant; they are very active and forceful men. The presidents of the company have always been active and strong men. Mr. Creed was an active strong man; Mr. Hockenbeamer was in a different way and, I think, Mr. Black is an active and forceful man.

Q. You don't know anything about what assurances the North American Company might have given in connection with the 1930 transaction?

A. No, except to have Mr. Hockenbeamer—Mr. Hockenbeamer stated that the North American had given him assurance that it would not interfere in the management or control of the [845] Pacific Gas and Electric Company.

Q. Mr. Hockenbeamer discussed with you some of the matters pertaining to the negotiations leading up to the acquisition?

A. Only generally as to the negotiations, but he did discuss that subject with me at different times,

(Testimony of John P. Coghlan.)

and I heard it discussed in the Executive Committee. Mr. Hockenbeamer made statements to the members of the Executive Committee that he had assurances from the North American Company.

Q. In your opinion, was Mr. Hockenbeamer apprehensive that the North American Company might dominate the affairs of the Applicant in the event that it acquired a large block of its securities?

A. The negotiations ran along for a considerable time and when that subject came up I thought Mr. Hockenbeamer had it determined. He spoke of it as a matter that had been determined by his discussion with the North American representatives.

Q. Do you know anything about any assurance that the Standard Gas & Electric Company was required to give by the Applicant at the time it acquired a substantial block of its stock?

A. No, I do not. [846]

Q. What do you know about any understanding had between North American and the Applicant in regard to North American's representation on your Board?

A. I know nothing about that of my own knowledge. I heard—Mr. Hockenbeamer did say to me and did say in the Executive Committee that North American was entitled to three members on the Board because of their proportionate stock holding.

Q. What about representation on the Executive Committee?

A. I didn't hear that discussed until I saw Mr.

(Testimony of John P. Coghlan.)

Earl up here at the Executive Committee; at least, I don't recollect any discussion.

Q. I believe you testified you resigned in order to make way for one of North American's representatives on the Board? A. Yes, I did.

Q. That was at Mr. Hockenbeamer's request?

A. Yes.

Q. Do you know why North American now has only two representatives on your Board?

A. No, I do not. I know that Mr. Earl died some months before Mr. Hockenbeamer died and that no action was taken to fill his place. I understand—I don't know that I was told so in so many words—that Mr. Earl was [847] retained by the North American Company by way of reward or pension for his past services.

Q. Was it your understanding that Mr. Earl was receiving compensation from the North American Company? A. It was.

Q. During the time he was a director of the Applicant? A. Yes.

Q. Do you know whether or not Mr. Earl was then an officer or director of the Western Power Corporation? A. No, I don't recall.

Q. You never heard any discussion relative to North American being requested not to have a third representative on the Board in order that a local director might serve?

A. No, I heard no such suggestion.

(Testimony of John P. Coghlan.)

Q. Has anyone connected with the North American Company ever told you in effect that its representation on the Board was not as important during Mr. Black's presidency as it was during Mr. Hockenbeamer's presidency?

A. No one has ever told me that.

Q. Do you consider Mr. Black as a North American representative on Applicant's Board?

A. No, I do not.

Q. Since when have you not so considered him?

A. I have never considered him since he was elected president. A few days before he was elected president Mr. [848] Elsey sent for me at his office in the American Trust Company and he told me that several members of the Board, or several members of the Executive Committee had discussed Mr. Black for president of the company, and had proposed to recommend him to the Board of Directors. He said, "Mr. Black has agreed to resign from the North American Company and will sever his connections with the North American Company" and we had a little discussion about that, and I recall his saying that he considered Mr. Black a western man and asked me what I thought about it.

I told him that I knew Mr. Black as a western man and that all his interests were in the west, and that I regarded him as being in the East temporarily.

Q. What do you know about the proxy machinery of the Applicant?

A. Well, as long as I can remember the proce-

(Testimony of John P. Coghlan.)

dure in the company the senior officers of the company have been the proxy representatives. Mr. Creed and Mr. Britton and Mr. Hockenbeamer were proxy representatives in the early days; then, Mr. Creed, Mr. Leach and Mr. Hockenbeamer, and after Mr. Creed died the representatives were Mr. Hockenbeamer, Mr. Leach and Mr. Foote; then, Mr. Hockenbeamer, Mr. Downing and Mr. Foote, and when Mr. Black came in it was Mr. Black, Mr. Downing and Mr. Foote. It has been the same officers for years with different names. [849]

Q. You mean the particular officers of the company have been selected proxies as a matter of course?

A. Yes, and then the proxy representatives have been approved either by the Executive Committee or the Board of Directors. Since I have been sitting with the Executive Committee I have noticed that the Proxy Committee has been approved on recommendation of the president and the necessary resolutions passed.

Q. Well, do you know who makes up the list of directors as proposed candidates for directors included in the proxy statements sent out with solicitation for proxies?

A. Usually the old directors are elected at each annual meeting.

Q. Has there been a proxy fight in the history of the Applicant?

A. Not since I have had reason to know anything about it.

(Testimony of John P. Coghlan.)

Q. So far as you know, have all of the directors of the company always been unanimously elected at annual stockholders meetings? A. Yes.

Q. Do you know how the Applicant is advised as to who North American desires as its representatives on the Board? A. No, I do not. [850]

Q. How frequently has Mr. Black advised you as to North American's wishes in reference to a particular matter, either personally or in a Board meeting, or in a meeting of an Executive Committee?

A. I don't recall that he has ever advised me of any wishes of the North American Company.

Q. In any of your discussions with Mr. Black has he ever indicated to you what North American's viewpoint on any matter was?

A. No, he has not.

Q. Since you have been a director have you ever been advised in any way what North American's desires were with respect to a particular matter?

A. No, except in that matter of dividend that I referred to yesterday.

Q. Then, the advice that you received in that respect came from Mr. Earl. A. Mr. Earl, yes.

Q. Was that the only representative of North American Company that had ever discussed the matter with you? A. The only one.

Q. Have you ever asked Mr. Black what North American's views were in connection with any matter pertaining to the Applicant?

A. No, I don't recall that I have. [851]

(Testimony of John P. Coghlan.)

Q. What weight do you think should be given to any suggestion that North American might make in respect to any matter pertaining to the Applicant?

A. Well, I think it should have the recognition that a stockholder would be entitled to. I think any stockholder is entitled to make suggestions and have suggestions and recommendations considered, and if they are for the advantage of the Pacific Gas and Electric Company should be acted on favorably.

Q. Do you feel free to act upon any matter relating to the Applicant's business without being advised as to what North American's views are on the matter? A. I do.

Q. What was the extent of Mr. Earl's activities during the time he was a member of your Executive Committee and on your Board of Directors?

A. Mr. Earl attended quite regularly. He took rather copious notes. I don't recall that he was ununusually active in the meetings: he discussed matters generally.

Q. Did he frequently propose suggestions and recommend them with a great deal of force?

A. No, I don't recall that he did.

Q. Has there ever been any major difference of opinion between Mr. Black and the Board since he has been president? [852]

A. No, I should say not. His relations with the Board have been quite harmonious.

Q. What about that situation during Mr. Hockenbeamer's presidency?

(Testimony of John P. Coghlan.)

A. As to the dividend?

Q. No. As to the relationship between Mr. Hockenbeamer and the Board

A. Well, I would say Mr. Hockenbeamer's relations with the Board were not quite as smooth as Mr. Black's, because Mr. Hockenbeamer made decisions in his—largely in his own way and he sometimes didn't present matters until he had worked them out himself and presented them more or less as concluded, and I think Mr. Black submits matters in a more general way and more frequently to the Board and has more discussion before action is taken.

Q. In other words, do you consider Mr. Black more amenable to advice from the Board than Mr. Hockenbeamer was.

A. No, I don't. I think that Mr. Black has a little more ability to handle men than Mr. Hockenbeamer had.

Q. Well, would you say that Mr. Black kept the Board more closely advised as to matters which he has presented to him for consideration than Mr. Hockenbeamer did?

A. Yes, he does. Mr. Black has a habit of bringing up matters a number of times beginning in the early days of—I should say the early hours of a negotiation and transaction, [853] and keeping the Executive Committee informed, discussing the matter at different meetings.

Q. So that it is your opinion that during Mr. Black's presidency the Executive Committee and

(Testimony of John P. Coghlan.)

the Board has been in closer touch with the problems pertaining to the Applicant than it was during Mr. Hockenbeamer's lifetime?

A. Yes, I feel that way about it.

Q. Did you have any contacts with the North American Company regarding Mr. Black's presidency prior to the time he became president?

A. No, no, I did not.

Q. Was your first knowledge that Mr. Black was being considered as president of the Applicant after Mr. Hockenbeamer's death that received by you from Mr. Elsey in the conversation that you have just testified concerning?

A. Yes, that is the first I had heard of it. It came from Mr. Elsey; he called me to his office and told me about it.

Q. What further discussions did you participate in regarding Mr. Black's selection prior to the time it was acted upon by the Board?

A. I had that talk with Mr. Elsey and then a day or so later Mr. Miller sent for me and asked me to prepare some publicity and something of the nature of a biography [854] of Mr. Black, but that was all. The matter came up in the Board meeting and was acted upon.

Q. Were any other individuals considered for president of the Applicant?

A. Mr. Elsey told me others were considered, but he didn't mention any names.

Q. Was it your understanding in your conversation with Mr. Elsey that at the time he talked to

(Testimony of John P. Coghlan.)

you that he had conferred with all the members of the Executive Committee and other members of the Board?

A. He told me that he had conferred with several members of the Board and I assumed all the members of the Executive Committee, although he didn't put it that way. As I recall, he told me specifically he talked with Mr. Miller, Mr. Chickering and others.

Q. Do you know whether or not before Mr. Black was offered the position of the president of the Applicant, he was required to give any assurance as to what his future attitude toward the North American would be?

A. No, I do not, except that statement that Mr. Elsey made that Mr. Black would resign his vice-presidency and sever his connection with the North American Company.

Q. In your opinion, could North American exert a substantial influence over the policies and management of the Applicant if it exerted such an influence over Mr. Black [855] even though representatives of the North American Company never attended Board meetings or had any other contacts with other directors or officers of the Applicant?

A. No, I don't think so. I think the directors of the company would be quite independent and would act according to their judgment to the best interests of the company.

Q. Do you know anything about the extent of the contacts between Mr. Black and the North

(Testimony of John P. Coghlan.)

American Company? A. No, I do not.

Q. Are you familiar with Applicant's Exhibit No. 33 and 45? A. What are the exhibits?

Q. Those constitute the exhibits relating to the reports made by the Applicant to the North American Company.

This is 33 (indicating) and 45 is the statistical statement that was introduced when Mr. Beckett was on the stand.

A. (Examining documents) I am familiar with these reports having seen them in the meetings of the Executive Committee and elsewhere and having seen them, through the officers of the company, that is all.

Q. Do you have any knowledge of any reports other than those included in Applicant's Exhibits 33 and 45 which are made by the Applicant to the North American Company either regularly or irregularly? [856]

A. No, I have not. As a matter of fact, I didn't know these were being sent to the North American Company.

Q. Do you personally send any reports to the North American Company? A. None.

Q. What has been the extent of your correspondence with that company?

A. I have had no correspondence except, as I said, a personal letter or two to Mr. Fogarty or Mr. Doolittle acknowledging speeches or addresses that they have made. I had a little correspondence with Mr. Fogarty last year on a personal matter.

(Testimony of John P. Coghlan.)

It was this: Two years ago my son was in Harvard Law school, and I wrote Mr. Fogarty and asked him to send the boy an introduction to Dean Landis; that is the only correspondence I have had with Mr. Fogarty that I recall.

Q. Were you advised from any source as to North American's wishes in regard to the increase of dividends on the common stock of the Applicant which occurred in 1936? A. No, I was not.

Q. And the only advice you had concerning their attitude during the reduction was that received from Mr. Earl? A. That is all. [857]

Q. Did Mr. Black discuss with you the advisability of an increase in the dividend in 1936 prior to the time it was recommended to the Board?

A. He mentioned it to me before the dividend was declared and called attention to the better earnings, and to the fact that the company was in a position to pay an additional dividend?

Q. Do you know whether or not North American Company was advised as to the proposed increase prior to the time the action was taken by the Board? A. No, I do not.

Q. What do you know about National City's relationships with the Applicant during the period 1921 to 1931 or '32?

A. Very little, except the general knowledge that the National City Company handled some of our bond issues.

Q. They handled them all during that period, did they not? A. Yes, all of them, yes.

(Testimony of John P. Coghlan.)

Q. Do you know who selected the National City Company as syndicate manager of the various issues of bonds put out by the Applicant?

A. No, I do not.

Q. During that period?

A. No, I do not. [858]

Q. Who carried on the negotiations in relation to the sale of the bonds of the Applicant?

A. Mr. Hockenbeamer did in those days.

Q. Is it your opinion that Mr. Hockenbeamer handled those matters almost exclusively without the aid of assistance of other officers or employees of the Applicant?

A. He probably had the assistance of other employees, but he generally had charge of our financing at that time.

Q. You mean he would personally carry on the negotiations with the underwriting syndicate?

A. Yes, as far as I know.

Q. Your work in connection with the company is not of a financial nature?

A. No, it is not.

Q. Who, in your opinion, is responsible for the selection of Lazard Freres & Company as syndicate manager of the $45,000,000 issue of bonds sold by your company in March of 1935?

A. Well, I assume that Mr. Hockenbeamer was.

The Examiner: Miss Calkin, I have noticed on a number of occasions you have referred to this $45,000,000 issue of March 1935. According to Applicant's Exhibit 42 that was in April 1935.

(Testimony of John P. Coghlan.)

Miss Calkin: Maybe that is correct. I have some other information that the bonds were sold on March twenty [859] something.

The Examiner: Again, according to the same exhibit, the $90,000,000 bond offering of March 1936 you have referred to as April 1936. I don't know whether this Exhibit 42 is correct or not.

Miss Calkin: I don't know the exact date but I think——

The Examiner (Interposing): It may not be important because apparently nobody is confused by the difference.

Miss Calkin: My information is that the bonds were sold on March 28, 1935, and I don't think you have a date for April '35, but there was not any other $45,000,000 issue during the entire year.

The Examiner: No; I say there apparently has been no confusion about it except the exhibit differs.

Miss Calkin: The date I have for the $90,000,000 issue is March '36.

Mr. Phleger: I don't think there is any confusion. It is a fact that under the requirements of the Securities Act the bonds are frequently sold to the underwriter conditionally before they are sold by the underwriter to the public. There is a delay of at least 20 days in there which may very well account for the March and April dates.

Miss Calkin: And may have been the date of the underwriter's contract.

Mr. Phleger: Yes. [860]

(Testimony of John P. Coghlan.)

Miss Calkin: Was there a question that was unanswered?

(The last question and answer were read by the reporter.)

By Miss Calkin:

Q. Did the representatives of any underwriting house approach you in an effort to get the leadership of that business? A. No.

Q. Do you know whether or not Mr. Hockenbeamer conferred with any representatives of the North American Company in regard to the selection of Lazard Freres as syndicate manager of that issue? A. No, I do not.

Q. Do you know whether or not any representatives of the North American Company objected to the selection of Lazard Freres?

A. No, I do not.

Q. Did you have any participation in the selection of the syndicate manager or any members of the syndicate other than your approval of the syndicate as a director of the corporation?

A. I had no part in it except to approve it as a director.

Q. Are you acquainted with Mr. Charles Blyth?

A. Yes. [861]

Q. Did Mr. Blyth ever talk to you concerning the desirability of the firm of Blyth & Company heading the Applicant's business?

A. No, he did not.

Q. At no time during 1935 or 1936?

A. No, I don't recall that he ever did.

(Testimony of John P. Coghlan.)

Q. Did any representatives of Blyth & Company talk to you in regard to such matters during that period?

A. No, I don't recall that any of them ever did.

Q. Did Mr. Black, after he became president, discuss with you the change of leadership of syndicates formed to purchase Applicant's bonds from Lazard Freres & Company to Blyth & Company?

A. No. I heard some discussion in the Executive Committee to the effect that Blyth was a western house with widespread connections over the country and was considered a very able distributor of bonds.

Q. Did you ever hear any criticism of the manner in which Lazard Freres handled the issues which were purchased by the Syndicate headed by it?

A. No, I don't recall any criticism.

Q. Now, in the Executive Committee discussions that you refer to what members of the Executive Committee participated in the discussion?

A. Well, I remember Mr. Black discussed the matter of [862] the bond issues at several different meetings stating the progress that was being made and the price that was likely to be obtained, and there was a general discussion as to Mr. Blyth leading the syndicate, and some discussion as to his western connections and the fact it was a western house.

Q. Would you say that any member of the Executive Committee other than Mr. Black was urging the selection of Blyth & Company?

(Testimony of John P. Coghlan.)

A. Well, I have a recollection that Mr. Chickering spoke favorably on behalf of Mr. Blyth. I don't recall any other member of the Executive Committee.

Mr. Phleger: That is Mr. Blyth, you mean?

The Witness: Blyth, yes.

By Miss Calkin:

Q. Did you get the impression that the selection of Blyth & Company was more agreeable to the members of the Executive Committee and later to the members of the Board, than had been the selection of Lazard Freres & Company.

A. I thought so because of Mr. Blyth's western connections and the fact that he was a western house.

Q. Were you, as a director, more favorable to Blyth & Company's leadership than that of Lazard Freres & Company?

A. I was because of Mr. Blyth's western connections. [863] I thought any identification with the western house was helpful to the company.

Q. Did Mr. Black ever tell you that the North American Company suggested a change in the syndicate management of Applicant's issue?

A. No, he did not.

Q. Did you have any contacts with any representatives of the North American Company in regard to this matter? A. No, none.

Q. Do you know who is responsible for the inclusion of Dillon Read & Company in the syndicate

(Testimony of John P. Coghlan.)

which purchased the $90,000,000 issue of April, 1936? A. No, I do not.

Q. Did you hear any discussion regarding the participation of Dillon Read & Company in that syndicate? A. I don't recall any now.

Q. Do you have any knowledge as to why Dillon Read & Company were not included in the syndicate formed in May of 1936 to purchase the $30,000,000 issue? No, I do not.

Q. To what extent has North American, to your knowledge, participated in the formulation of the financial policies of the company?

A. I don't know that it has participated in any way.

Q. Do you know whether or not Mr. Black conferred [864] with any representatives of the North American Company in regard to the price at which various issues put out by the Applicant during his presidency should be sold? A. No, I do not.

Q. Do you know where the negotiations between the Applicant and the syndicate manager have been carried on since Mr. Black has been president?

A. I understand here in San Francisco with Mr. Blyth.

Q. It is your best judgment that the negotiations were carried on between the Applicant and the San Francisco Branch of Blyth & Company rather than the New York Branch of Blyth & Company?

A. Yes, that was my understanding.

Miss Calkin: I think that is all.

(Testimony of John P. Coghlan.)

Redirect Examination

By Mr. Phleger:

Q. Mr. Coghlan, you have testified that you called at the North American office in New York when you have been in New York which, you stated, was five or six times in the last ten or twelve years. Were those business calls or——

A. (Interposing) No, they were social calls. I never went to the North American office on any particular business. I was always in the East either at conventions or on vacations or some matter down in Washington.

Q. Mr. Coghlan, is it a fact that certain matters of [865] policy are presented by Mr. Black to the Executive Committee and on occasion to the Board of Directors for discussion before Mr. Black himself has to come to a decision as to what should be done?

A. Yes, that is true. I have in mind two recent matters. These leases—this lease that we are negotiating with the City of San Francisco has been before the Executive Committee since last June. Mr. Black reports on it each week and discusses the matter and some of the members of the Executive Committee discuss the matter and make suggestions, and I suppose the judgment that has been reached is kind of a composite judgment.

Then, I have in mind the recent rate reductions that were made. They were discussed several times

(Testimony of John P. Coghlan.)

in the Executive Committee, the character of the reductions and the amounts, and I recall Mr. Miller expressing himself as to the type of rate setup that should be made.

Q. Well, would it be fair to say that Mr. Black's decisions and recommendations on policy matters are usually the result of first talking out and discussing with the Executive Committee the problem and using the benefit of the suggestions of the Executive Committee in arriving at a conclusion which represents the composite views of all?

A. I think that is a correct statement. He is very free in his discussion and very—and goes into considerable [866] detail in matters of interest to the committee.

Q. And he takes advantage of these suggestions in the formulation of his own ultimate views, does he not? A. Yes, I should say he does, yes.

Q. Would it be fair to say that the harmonious relationship that exists between Mr. Black and the members of the Executive Committee and Board of Directors is primarily due to the fact that he discusses prior to final decision, freely and fully with the Executive Committee and the Board all such questions in order to first determine their viewpoints and benefits by those viewpoints, if possible?

A. I think that is very true. I think his method has been very satisfactory to the Board and to—or to the Executive Committee particularly and to himself.

(Testimony of John P. Coghlan.)

Q. Now, you have been asked as to dominant figures in the history of the company and you have mentioned a succession of presidents.

Is it not a fact that there have always been a substantial number of able active rugged individualists on the Board and Executive Committee of the Company ever since you have been connected with it?

A. Yes; Mr. Miller is of that type; Mr. Frank B. Anderson was particularly of that type; Mr. Creed was of that type and Mr. Frank Drum.

Q. Was Mr. Elsey of that type? [867]

A. Mr. Elsey; yes, Mr. Elsey is quite forceful, but not as vigorous in expression as the other gentlemen.

Mr. Phleger: That is all.

Miss Calkin: Just one further question.

Recross Examination

By Miss Calkin:

Q. Do you have charge of the advertising of the Applicant?

A. No, I have general—some general supervision over it but the publicity department reports directly to Mr. Downing. I am consulted very generally on advertising.

Q. Have you ever conferred with any representatives of North American Company in regard to advertising policies?

A. Never, no, never have.

Miss Calkins: That is all.

The Examiner: You may be excused, Mr. Coghlan.

(Witness excused)

Mr. Phleger: Will you take the stand, Mr. Palmer, please.

Whereupon—

SILAS H. PALMER

was produced as a witness for and on behalf of the Applicant and having been first duly sworn, was examined and testified as follows: [868]

Direct Examination

By Mr. Phleger:

Q. How long have you resided in California, Mr. Palmer?

A. I was born here a little over 66 years ago.

Q. When did your family first come to California?

A. My father came in '68 and my mother was born here.

Q. Has your family lived here ever since?

A. Yes.

Q. What is your business or profession?

A. Well, I was in the construction business for some 35 years.

Q. Your present position, rather business?

A. Well, I am no longer in the construction business.

(Testimony of Silas H. Palmer.)

Q. Would you say acting as a corporation director in investment matters and so forth?

A. Yes.

Q. What corporations are you connected with as a director or officer?

A. I am a director in Pacific Gas, the Bank of California, the Paraffine Companies; I am a trustee of the Cypress Lawn Association.

Q. Are you a director of the Railway Equipment and Realty Company? [869] A. Yes.

Q. Of the Golden State Company, Ltd.?

A. Yes sir.

Q. Pacific Coast Aggregates? A. Yes.

Q. Are all of those companies western companies? A. Yes.

Q. Is it fair to say that all of your interests of a financial nature are western rather than eastern?

A. Predominantly so.

Q. Have you any close connection with any eastern corporation?

A. None whatever, never have had.

Q. Do you own any stock of the North American Company? A. No.

Q. Have you ever owned any? A. No.

Q. So far as you know, do you own any securities of any subsidiaries of the North American Company?

A. I am positive that I don't.

Q. Do you know anybody who does own any stock of the North American Company or its subsidiaries?

(Testimony of Silas H. Palmer.)

A. No, I don't; I know nothing of the setup of the company. [870]

Q. Directing your attention to Exhibit 32, Applicant's 32, will you state the number of shares of Applicant which you yourself own and also the number of shares that are held or owned by interests with which you are affiliated?

A. I own 1275 shares of the common stock. Mrs. Palmer owns 800 shares of the preferred and 3720 shares of the common. My sister-in-law, Mrs. Knight, owns 500 shares of common.

There is a trust, of which Mrs. Palmer is one of the co-trustees that owns 6412 shares of the preferred and 3344 shares of the common.

Q. Now, you are an officer, rather, a director, are you not, of the Bank of California?

A. Yes, and they own—no, they do not own; they hold in trust, or they are in estates of which they are executor or administrator, agent and as custodian, 91,305 shares of preferred and 32,588 shares of common.

Q. How long have you been a stockholder of the Pacific Gas & Electric Company?

A. Can I refer to notes?

Q. Yes.

A. (Examining document) 1914 I purchased the first shares.

Q. And have you been a rather consistent purchaser [871] of stock since that time?

A. Yes.

Q. And is the same thing true of Mrs. Palmer?

(Testimony of Silas H. Palmer.)

A. Yes, Mrs. Palmer bought her first stock in 1916.

Q. And has been a stockholder and a consistent purchaser of stock since that time?

A. Since that time.

Q. When did you first become a director of the Pacific Gas and Electric Company?

A. In the fall of 1936.

Q. Who spoke to you about becoming a director?

A. Mr. Black.

Q. When did you become a member of the Executive Committee of the Pacific Gas and Electric Company? A. In the spring of 1938.

Q. Who spoke to you about becoming a member of the Executive Committee? A. Mr. Black.

Q. How long have you known Mr. Foote of the Pacific Gas and Electric Company?

A. Oh, I have—it is hard to place the date with him because, of course, if I had heard of him, but I would say that I have known him, 10, 15 years.

Q. How long have you known Mr. C. O. G. Miller? A. As far back as I can remember.

[872]

Q. How long have you known Mr. John D. McKee? A. For about 37 years.

Q. How long have you known Mr. Norman B. Livermore?

A. As far back as I can remember; we were youngsters together.

Q. How long have you known Mr. A. L. Chickering?

(Testimony of Silas H. Palmer.)

A. I have known him about—over 50 years.

Q. How long have you known Mr. Downing?

A. About 25 years.

Q. How long have you known Mr. Coghlan?

A. I have known Mr. Coghlan for 20 years or more, I guess 20 years.

Q. How long have you known Mr. McIntosh?

A. I have known Mr. McIntosh for 40, 45 years.

Q. How long have you known Mr. Wishon?

A. I have not known him so long, perhaps 15 years.

Q. How long have you known Mr. W. W. Crocker?

A. I have known his about 20 years.

Q. Did you know his father, Wm. H. Crocker?

A. I knew his father, Mr. Crocker, in 1901. He was at that time financing one of the electric companies that is now part of the P. G. & E., and he would make frequent visits to the project and I was on the project.

Q. How long have you known Mr. Henry D. Nichols? [873] A. Well, over 50 years.

Q. Were you acquainted with Mr. Frank Dame in his lifetime?

A. No, never met him; I don't believe I ever saw him.

Q. Were you ever acquainted with Mr. Edwin Gruhl during his lifetime?

A. I never have met him; I don't believe I ever saw him.

(Testimony of Silas H. Palmer.)

Q. Are you acquainted with Mr. F. W. Doolittle?

A. Is he of the Doolittle family, California mining?

Q. No; he is an officer of the North American Company.

A. Eastern—no, I never have met him, never heard of him—never saw him.

Q. Are you acquainted with Mr. James F. Fogarty of the North American Company?

A. Never have met him or seen him to my knowledge.

Q. Are you acquainted with Mr. Herbert C. Freeman?

A. No, never have. I may have met Mr. Freeman. I think he was an engineer on the Great Western Power project. Was he the Freeman that was—there was a Freeman on the Great Western Power project 20 years—25 years ago that I met at one time, but whether it is the same man or not, I don't know. [874]

Q. That was John R. Freeman, I believe.

A. I think it was, yes.

Q. Well, at least, you haven't seen or heard of a Freeman for many years? A. No.

Q. Have you ever had any communications directly or indirectly with any of the men I have just mentioned? A. These last men?

Q. Yes. A. No.

Q. Do you ever do any work or have any connection with any property which is now a part of Pa-

(Testimony of Silas H. Palmer.)

cific Gas and Electric System? A. Yes.

Q. What was that?

A. Well, in 1901 one of the first jobs I had was on the construction of the Tabeau Dam which is above the electra power house and it was a part of the Standard Electric project, and at that same time we put in two tunnels, one at the outlet of this—the Tabeau Reservoir and one inlet tunnel up at Mill Creek.

Q. That Standard Electric Company that you refer to is a California Corporation?

A. Yes.

Q. Whose properties have since become part of the [875] Pacific Gas and Electric properties?

A. Yes.

Q. Those are the properties that Mr. Wm. H. Crocker was heavily interested in?

A. Yes, he financed them, I believe.

Q. Now, how long have you known Mr. J. B. Black? A. 20 years.

Q. When did you first become acquainted with him?

A. At the time that my firm did some construction work on the Western Power Company at Lake Almanor.

Q. The Great Western Power Company?

A. Great Western Power, yes.

Q. When was that?

A. It was 1920 or '21.

Q. And have you been acquainted with him ever since? A. Yes.

(Testimony of Silas H. Palmer.)

Q. You knew of his work as an officer of the Great Western Power Company, did you, before he went East? A. Yes.

Q. Have you attended meetings regularly of the Board of Directors and of the Executive Committee? A. Yes.

Q. Do you freely and fully discuss all matters which are brought before those two bodies?

A. Yes. [876]

Q. Does any individual dominate the activities of those two bodies? A. No.

Q. Did you know that the North American Company was a substantial stockholder in the Pacific Gas & Electric Company when you became a director? A. Yes sir.

Q. Have you ever heard the name of the North American Company mentioned in any meeting of the Board of Directors or of the Executive Committee since you have been a member?

A. I probably heard it mentioned casually, but I can't recall any particular time or in connection with any particular discussion.

Q. Has the attitude of the North American Company with respect to any pending matter ever been stated at a meeting of the Executive Committee or Board of Directors?

A. Not to my recollection.

Q. Have you ever at any time or in any connection observed anything to indicate that the Pacific Gas and Electric Company is or was controlled

(Testimony of Silas H. Palmer.)

directly or indirectly by the North American Company, or the management or policies of the Pacific Gas and Electric Company are or were subject to a controlling influence directly or indirectly by the North American Company?

A. I never have seen any indication of it. [877]

Q. If the North American Company were to attempt directly or indirectly to control or to exercise a dominating influence over the management or policies of the Pacific Gas and Electric Company, would you oppose such attempts?

A. I certainly would.

Q. You think that the other directors of the company, with the exception of Mr. Fogarty and Mr. Freeman, would also oppose such attempts?

A. I think so.

Q. In the event that the North American Company were to attempt to control or exercise a dominating influence over the management or policies of the Pacific Gas and Electric Company do you think it would be able to do so? A. I do not.

Q. Why?

A. Well, I think the stock is very largely held in California and when not held by residents they are people who are in pretty close with the situation here in California, and I think from experience they have learned that Eastern domination of a corporation in California is not apt to be successful. Personally that has been my observation and I would be very much opposed to any concern that I had

(Testimony of Silas H. Palmer.)

anything to do with being dominated from the East, and I think that is a generally held opinion by the people who are investors in this community. [878]

Q. If the North American Company attempted to secure sufficient proxies to obtain a majority of the representation of the stockholders meetings of the Pacific Gas and Electric Company and such an attempt were resisted by the management in San Francisco, and the directors, do you think that the North American Company would be successful in its attempts?

A. I do not. If there was any opposition whatever by local people I don't believe they could get anywheres near a majority.

Mr. Phleger: That is all.

The Examiner: We will recess now before you start your cross examination. Five minutes.

(Thereupon a short recess was taken after which proceedings were resumed as follows:) [879]

The Examiner: Have you any further questions, Mr. Phleger?

Mr. Phleger: I have completed my examination.

The Examiner: Cross examination, Miss Calkin?

Cross Examination

By Miss Calkin:

Q. Mr. Palmer, you testified that Mr. Black had requested you to serve on Applicant's Board. Prior to that request had you ever made any request to

(Testimony of Silas H. Palmer.)

any of the directors or any representatives of the Applicant, regarding representation on the Board by you?

A. I never made any suggestion of any kind.

Q. Why would you oppose North American influence over the policies and affairs of the Applicant?

A. Well, it has been my observation for a good many years that eastern domination of a California company has not worked out. I would feel the same in regard to the Pacific Gas.

There is quite a bit of that stock there that, perhaps, was not bought on my advice exactly, but I was certainly quizzed by Mr. Holbrook concerning conditions. I know it was his idea that in buying that stock he was buying into a corporation that was operated by Californians, and it was in California and subject only to California influences.

Q. Who was Mr. Holbrook?

A. He was my father-in-law and——

Q. (Interposing) You are speaking of the stock in your [880] personal holdings, family holdings?

A. No. I am speaking of the stock in this trust.

Q. But it is a family trust? A. Yes.

Q. I thought Mr. Holbrook was connected with the Bank of California.

A. No. I feel that his idea was sound and as long as I have any influence with the trustees I feel that the thing to do is to carry out his ideas as far as possible.

(Testimony of Silas H. Palmer.)

Q. Were you ever financially interested in the Western Power Corporation or any of its subsidiaries?

A. I think I owned, if I am not mistaken, a few shares at one time, but not for very long. I think it was 100 shares.

Q. Was that prior to 1925 or after 1925?

A. It was considerably after that.

Q. Do you know who controlled the Western Power Corporation prior to 1925?

A. Well, it was always my idea that Mortimer Fleishhacker was the dominating influence there.

Q. Is he a Californian? A. Yes.

Q. So far as you know Western Power Corporation was not controlled by eastern interests prior to the time North American acquired control of that corporation?

A. Well, I am not very familiar with that; but I think [881] there was a good deal of eastern capital in there at one time, but I believe Mortimer and his brother were the dominating influences. Whether they represented eastern capital or not I don't know.

Q. Are you referring now to the Great Western Power Company of California, the operating company, or the Western Power Corporation, which was a holding company, with respect to the Great Western Power Company of California?

A. I don't know the difference. I don't know enough about the setup of the company to know the

(Testimony of Silas H. Palmer.)

difference. I do know in dealing with the company from a construction point of view that Mortimer Fleishhacker seemed to be the dominating influence.

Q. And you were dealing with the operating company? A. Yes.

Q. By reason of the fact that you did not become a member of Applicant's Board until 1936, you did not participate in or have no first hand knowledge of any of the negotiations leading up to the acquisition by North American of a large block of common stock of the Applicant? A. No.

Q. And you had nothing to do with the selection of Mr. Black as President of the Applicant, did you? A. Nothing.

Q. Did anyone ever tell you how he came to be selected [882] as Applicant's President?

A. I guess it is nothing but common gossip—The general idea was, and my idea was that he was a man who had been educated here and had received his training as far as possible out here, and his ten years or less experience in the east would be of material help to him in operating a big company.

Q. Since you have been Director, or a member of the Executive Committee of the Applicant, has Mr. Black ever advised the Board or the Executive Committee as to North American recommendations on any matter?

A. I never heard him advise the Board in that connection at any time.

Q. Have you ever been advised from any source

(Testimony of Silas H. Palmer.)

as to what North American's desires were with respect to a particular matter?

A. Never had any communication with them whatsoever.

Q. To your knowledge has the Board or the Executive Committee ever asked Mr. Black to ascertain the viewpoints of North American on a matter relating to the Applicant?

A. No; it has never been done in my time.

Q. What weight would you, as a Director of the Applicant, give to any suggestions which North American might make in view of the fact that that company is the largest stockholder of the [883] Applicant?

A. It would set up a prejudice against it.

Q. Since you have been a Director have the relationships between the Board and Mr. Black been harmonious? A. Yes.

Q. As far as you know the Board has never opposed a proposition urged by Mr. Black?

A. Well, the discussions on matters that have come up have been very free and very full. I don't think Mr. Black has ever taken a decisive stand on any proposition, and I don't believe any of the Directors have taken a solid stand against any proposition. It has been a case where the situation has been thoroughly discussed in a very friendly way. I think in each instance the result has been satisfactory to all the members.

Q. In other words, the discussions have resulted

(Testimony of Silas H. Palmer.)

in an agreement between Mr. Black and the members of the Board on all matters?

A. Yes; the discussions have been very full on any important matters.

Q. Do you think it would be possible for North American to exert an influence over Applicant's management and policies if it exerted such an influence over Mr. Black, even though North American representatives never attended Board meetings or had any other contacts with the other officers or Directors of [884] the company?

A. I don't believe that Mr. Black could influence the Executive Committee, particularly, and probably the Board on any fundamental matter that the members didn't think was for the best interests of the company.

Q. Do you know the extent of Mr. Black's contacts with North American people? A. No.

Q. Are you familiar with the reports submitted by the Applicant to the North American Company?

A. No.

Q. So far as you know the North American Company is kept no better advised as to the policies and operations of the Applicant than any other stockholder?

A. As far as I know they are not.

Q. Have you ever been acquainted from any source with North American's attitude on the Hetch Hetchy situation?

(Testimony of Silas H. Palmer.)

A. Never have heard them mentioned in connection with it.

Q. Were you a member of the Board at the time the dividend of the Applicant on its common stock was increased in 1936? A. Yes.

Q. Who recommended the increase at that time?

A. My recollection of it is that Mr. Black suggested it, and it was discussed by the different members of the Board and finally it was passed. [885]

Q. Do you know whether or not the North American Company was advised of the increase before the action increasing the dividend was taken by the Board? A. No, I do not.

Q. Do you know whether or not the North American Company recommended the increase in dividends on the common stock at that time?

A. No; there was no statement of that made at that meeting, I am sure.

Q. Do you know anything about the circumstances which resulted in a change of the leadership of Applicant's financing from Lazard Freres & Co. to Blyth & Co.? A. No.

Q. Since you have been a Director I believe the Applicant has had two issues of bonds, no, one issue of bonds, which were sold to the public, namely, 35 million dollar issue in October of 1936. Did you hear any discussion at that time as to the selection of the syndicate, manager of the syndicate which purchased that issue?

A. No. I was made a Director just about that

(Testimony of Silas H. Palmer.)

time and I do not believe that the matter was discussed at the first meeting that I attended. I think it had all been cleaned up. I remember that one of the first duties I had to perform was in connection with a lot of papers to be signed in connection with this refunding operation. [886]

Q. But you didn't take an active part in that piece of financing?

A. No. It was all done before I was on the Board.

Q. Do you recall the 15 million dollar bond issue of February, 1938, which was sold privately to a number of insurance companies, I believe?

A. No, I don't.

Q. Who, generally speaking, handles the financing of the Applicant?

A. I would say that Mr. Black did that, formulated the general policy, after discussion. He discusses the matter with the Executive Committee rather fully.

Q. Are you acquainted with the underwriting firm of Lazard Freres & Co.? A. No.

Q. Are you acquainted with Mr. Charlie Blyth?

A. Yes.

Q. How long have you known him?

A. Oh, I have known him twenty or thirty years, I guess.

Q. Do you consider the underwriting house of Blyth & Co., with which he is connected, as a California banking house? A. Yes.

(Testimony of Silas H. Palmer.)

Q. If the selection of a syndicate manager for any piece of Applicant's financing were to be determined by you, would you favor the selection of Blyth & Co. over Lazard Freres & Co.? [887]

A. Other things being equal, yes.

Q. Do you know to what extent, if any, North American was consulted in reference to the financings of the Applicant since you have been Director?

A. No. As far as I know they haven't been consulted at all.

Miss Calkin: I think that is all.

The Examiner: Any redirect, Mr. Phleger?

Redirect Examination

By Mr. Phleger:

Q. Mr. Palmer, is it Mr. Black's practice, prior to himself announcing any conclusion on important matters, to thoroughly discuss those matters with the Executive Committee and with the Board?

A. Yes. The usual procedure is for Mr. Black to bring up a subject in the very beginning and give us all an opportunity to think it over during the week. He advises us of the progress of negotiations, and we have discussions for several meetings usually. We are kept advised of progress and any suggestions we wish to make are made.

Q. And is it fair to say that Mr. Black's own judgment and views are very largely influenced by the judgment and views of the Executive Committee? A. It seems that way to me.

Mr. Phleger: That is all. [888]

(Testimony of Silas H. Palmer.)

The Examiner: Any further questions?

Miss Calkins: No further questions.

The Examiner: You may be excused, Mr. Palmer. Thank you.

(Witness excused.)

Mr. Phleger: Mr. Nichols, please.

Whereupon—

JOHN D. NICHOLS

was produced as a witness for and on behalf of the Applicant, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Mr. Nichols, will you give your name and address for the record, please? A. Residence?

Q. Yes.

A. John D. Nichols; 40 Lincoln Avenue, Piedmont.

Q. How long have you lived in California, Mr. Nichols? A. Sixty-seven years.

Q. You were born here? A. Yes.

Q. When did your parents come to California?

A. My father arrived in 1851; my mother about 1860.

Q. Since that time has your family lived here continuously? A. They have. [889]

(Testimony of John D. Nichols.)

Q. What is your business or profession?

A. Cordage manufacturer.

Q. You are President of the Tubbs Cordage Company, are you? A. Yes.

Q. What companies are you connected with as director or officer?

A. Well, the Pacific Gas and Electric Company, Pacific Telephone & Telegraph Company, Wells Fargo Bank—I should have mentioned the Tubbs Cordage Company, I guess, which I haven't—Hiram Tubbs Estate Company, A. L. Tubbs Company, Henshaw Investment Company, Riverside Cement Company, San Diego County Water Company.

Q. Are you a director of the California Western States Life Insurance Company?

A. Yes, I am.

Q. Are you a director of the Firemen's Fund Insurance Company?

A. Yes; Firemen's Fund Insurance and Firemen's Fund Indemnity.

Q. Are you a director of the California Packing Corporation? A. Yes.

Q. Are you associated in any capacity with the Federal [890] Reserve Bank of the Twelfth District?

A. Yes. I serve on the Advisory Committee, Industrial Advisory Committee, and also on the Executive Committee of the Advisory Committee.

Q. You are a director or an officer of all of these corporations that you have mentioned?

(Testimony of John D. Nichols.)

A. Yes.

Q. Is it a fair statement to say that all of the companies in which you have a financial interest are California or western companies?

A. Yes, they are.

Q. Have you any substantial interest in any eastern corporations? A. No, I have not.

Q. Do you own or have you ever owned any stock in the North American Company?

A. I have not.

Q. Or in any of its affiliates or subsidiaries?

A. You mean——

Q. (Interposing) Of the North American Company.

A. No, I have not; no interests in any of them.

Q. Referring to Applicant's Exhibit No. 32, Mr. Nichols, will you state the number of shares which you, or interests with whom you are affiliated, own in the Applicant?

A. I own directly and personally 1,000 shares of preferred [891] stock and 2928 shares of common stock; Mrs. Nichols owns 2,000 shares of preferred and 3,000 shares of common; our daughter, Mrs. John Blemer, owns 500 shares of preferred and 500 shares of common; my son owns 400 shares of preferred and 853 shares of common; a family connection, Mrs. Alice H. Tubbs, owns 3,300 shares of preferred and 1272 shares of common.

The affiliates: Tubbs Cordage Company owns 14,000 shares of preferred and 3,630 shares of com-

(Testimony of John D. Nichols.)

mon; the A. L. Tubbs Company owns 200 shares of preferred and 238 shares of common; the Wells Fargo Bank & Union Trust Company owns 36,751 shares of preferred and 32,952 shares of common.

Q. I believe the California Western States Life Insurance Company——

A. (Interposing) owns 4,000 shares.

I have family connections that haven't been put down, and they represent about 10,000 shares more.

Q. How long have you owned stock in the Applicant's company?

A. Some stock many years ago. I recall I accepted some common stock after the fire of 1906 in payment of a dividend that was delayed or deferred at the time of the fire in 1906. That was a small holding. I have forgotten the exact year, but probably somewhere from 1914 to 1918 or 1919.

Q. And you have been accumulating stock ever since then? A. Yes. [892]

Q. Have you ever sold any stock in the company?

A. Never.

Q. Is that statement true also with respect to the stock owned by the Tubbs Cordage Company?

A. It is.

Q. When did you become a director of the Pacific Gas and Electric Company?

A. March, 1938.

Q. Who invited you to become a director?

A. Mr. Black.

Q. How long have you known Mr. Black?

A. I have known Mr. Black for many years by

(Testimony of John D. Nichols.)

reputation, but personally about five years; about the time that he came out here to take over the presidency of the company.

Q. Were you acquainted with Mr. Frank Dame in his lifetime? A. No.

Q. Were you acquainted with Mr. Edwin Gruhl in his lifetime? A. No.

Q. Were you acquainted with Mr. F. W. Doolittle? A. No.

Q. Do you know Mr. James F. Fogarty, or Mr. Herbert C. Freeman? A. I do not. [893]

Q. Have you ever communicated with them directly or indirectly? A. I have not.

Q. Have you ever heard the name of the North American Company mentioned in any meetings of the Board of Directors of the Pacific Gas and Electric Company? A. I believe not.

Q. Have you ever at any time, or in any connection, observed anything indicating that the Pacific Gas and Electric Company is or was controlled, directly or indirectly, by the North American Company, or that the management or policies of the Pacific Gas and Electric Company are or were subject to a controlling influence, directly or indirectly, by the North American Company?

A. No, I have not observed any such connections.

Q. If the North American Company were to attempt, directly or indirectly, to control or to exercise a dominating influence over the management or

(Testimony of John D. Nichols.)

policies of the Pacific Gas and Electric Company would you oppose such attempts? A. I would.

Q. Do you think that the other directors of the Pacific Gas and Electric Company, with the exception of Mr. Fogarty and Mr. Freeman, would also oppose such attempts?

A. I believe they would. [894]

Q. In the event that the North American Company were to attempt to control or exercise a dominating influence over the management or policies of the Pacific Gas and Electric Company, do you think it would be able to do so?

A. No, I do not think so.

Q. If the North American Company had attempted to secure sufficient proxies to obtain a majority of the representation at a stockholders' meeting of the Pacific Gas and Electric Company, and such an attempt were resisted by the management, and the San Francisco directors, do you think the North American Company would be successful in its attempt? A. I do not think so.

Q. Will you give the reason for that conclusion?

A. I think the Pacific Gas and Electric Company is, you might call it, a western or local company, and its stockholders are largely residents of the State of California. I cannot imagine that they would approve of the management of this company leaving the State and coming under the domination of the North American Company, or any other holding company.

(Testimony of John D. Nichols.)

Q. Do you think it would be to the interest or advantage of the company, or its stockholders, if it were to be controlled or dominated by any interest outside California? A. No, I do not.

Mr. Phleger: That is all. [895]

The Examiner: Cross examination?

Cross Examination

By Miss Calkin:

Q. Mr. Nichols, prior to the time Mr. Black requested you to become a member of the Applicant's Board had you requested representation on the Board of any director of the Applicant, or anyone? A. No.

Q. How well did you know Mr. Black prior to the time he made the request for you to serve on the Board?

A. I had met him, I think it was about five years ago, and I may have met him occasionally after that. At the time that he invited me to serve on the Board, or since that time, I have seen more of him naturally.

Q. What members of the Applicant's Board were you acquainted with at the time you became a director of the Applicant?

A. Well, Mr. C. O. G. Miller, Mr. Chickering, Mr. McIntosh, Mr. Livermore, Mr. McKee, Mr. Palmer, Mr. Coghlan, Mr. Crocker, Mr. Foote, and Mr. Wishon.

Q. Had you known those gentlemen for some period of time? A. Yes; most of them.

(Testimony of John D. Nichols.)

Q. Were any of them personal friends of yours?

A. Yes. [896]

Q. You said that you would oppose any attempt by the North American Company to influence or dominate the affairs of the Applicant. Why would you oppose any such attempt?

A. Because I think it would be a detriment to the interests of the other stockholders and the company. It would be entirely wrong to allow the dominating features to be outside the State of California.

Q. Were you ever associated with the Western Power Corporation or any of its subsidiaries?

A. No.

Q. Did you ever have any financial interest in that company? A. None whatever.

Q. As a Director of the Applicant what consideration have you given to the problems of the Vallejo Electric Light & Power Company?

A. I haven't given any consideration to it. I don't recall that.

Q. That is a company in which the Applicant owns approximately a 45 per cent interest. Do you recall the problems of that company, which operates in Vallejo, ever being considered by the Board of Directors of the Applicant?

A. I don't recall. It might have taken place, but I don't just recall it at the moment.

Q. And you were not acquainted with the company? [897] A. No.

(Testimony of John D. Nichols.)

Q. You don't know who does operate it?

A. I do not.

Q. You had nothing to do with the selection of Mr. Black as President of the Applicant?

A. No, I did not.

Q. Has anyone ever told you why the North American Company does not now have three members on the Applicant's Board of Directors and a representative on the Executive Committee, rather than only two directors and no representative on the Executive Committee? A. No.

Q. You never heard that matter discussed?

A. No.

Q. Has anyone ever told you that the North American Company did not consider its representation on the Applicant's Board as important since Mr. Black has become President of the Applicant as was considered prior to that time? A. No.

Q. Do you know who selects the proxies, or the proxy committee, for the annual meeting of Applicant's stockholders? A. I don't remember.

Q. Do you know who makes up the slate of directors which are included in the proxy statement which accompanies the notice of the annual stockholders' meeting in the solicitation [898] for proxies?

A. I imagine the management makes up that. The outgoing directors, as a rule, are re-elected. That has been the case in the two years that I have

(Testimony of John D. Nichols.)

been there. I assume it has been the same system for a long time.

Q. Would you say that Mr. Black, during the time you have been a director, has never advised the Board as to what North American's desires were in respect to any matter pertaining to the Applicant?

A. To my knowledge he has never advised the Board about anything in reference to North American.

Q. Have you ever inquired of Mr. Black, or of anyone else, what North American's attitude was with respect to particular matters?

A. I have not.

Q. What weight would you, as a director, give to North American's suggestions in view of the fact that that company is your largest stockholder?

A. I would give them the same weight that I would give to suggestions from any other stockholder.

Q. Would you give them greater weight in view of the fact that the North American Company has a large position and a great deal of experience in the utilities field?

A. I would give them more weight than some very small stockholder, but what I term the larger stockholders, I think [899] not.

Q. Since you have been a director of the Applicant, has there ever been any major difference of opinion between Mr. Black and the Board?

(Testimony of John D. Nichols.)

A. No.

Q. Mr. Nichols, do you feel free to act on any major problem pertaining to the Applicant without receiving North American's viewpoint on the same? A. Absolutely free.

Q. Did anyone ever tell you who suggested that Mr. Black become President of the Applicant?

A. No.

Q. Do you think that it would be possible for North American to exert a substantial influence over the management and policies of the Applicant if it exerted such an influence over Mr. Black, although its representatives did not participate in Board meetings and its representatives had no contacts with the Applicant's personnel or directors?

A. I don't quite understand your question?

The Examiner: Read the question.

(The question referred to was read by the reporter as above recorded.)

A. No, I do not.

By Miss Calkin:

Q. Do you have any knowledge as to the extent of the [900] contacts between Mr. Black and the North American people? A. None whatever.

Q. At the times that the determination of Applicant's dividend policy has been considered by the Board has there ever been any mention made of the wishes of the North American Company with respect to dividends on the common stock?

(Testimony of John D. Nichols.)

A. I have never heard any.

Q. Do you know whether or not North American has been consulted in reference to Applicant's policy in regard to the Hetch Hetchy situation?

A. I do not.

Q. Do you know anything about the circumstances under which Blyth & Co. was chosen to head the underwriting syndicate which purchased the 90 million dollar bond issue sold by the Applicant in 1936?

A. No; I have no knowledge of that.

Q. Are you acquainted with Mr. Blyth?

A. Yes.

Q. How long have you known him?

A. I guess about twenty-five years.

Q. Do you consider Blyth & Co., with which Mr. Blyth is associated, a California underwriting house? A. Yes, I do.

Q. Do you know any members of the firm, or associated with the firm of Lazard Freres & Co.? [901]

A. I do not.

Q. Is it your opinion that at no time since you have been a director of the Applicant that North American has exerted any influence over the affairs of the Applicant?

A. They have not so far as I know.

Miss Calkin: I think that is all.

(Testimony of John D. Nichols.)

Redirect Examination

By Mr. Phleger:

Q. Mr. Nichols, I think I forgot to ask you whether you now, or at any time, have owned any stock in the North American Company?

A. I have not.

Miss Calkin: You asked him that.

A. (continuing) Or at any time.

By Mr. Phleger:

Q. Other things being equal, as a director of the Pacific Gas and Electric Company would you favor a California underwriting house over an eastern underwriting house?

A. I certainly would. I think that all California corporations should do their business of financing in California if it is possible to do it.

Q. How long have you known Mr. Miller?

A. C. O. G. Miller?

Q. Yes.

A. I can't remember when I didn't know him. It must be [902] sixty years.

Q. How long have you known Mr. John D. McKee? A. Oh, I guess about forty years.

Q. How long have you known Mr. Norman B. Livermore?

A. That goes back I guess I can say fifty years or more.

Q. How long have you known Allen L. Chickering?

(Testimony of John D. Nichols.)

A. From the time he was a youngster; I will say over fifty years.

Q. How long have you known Mr. Downing?

A. Probably about ten years, I would say.

Q. How long have you known Mr. McIntosh?

A. Over forty-five years.

Q. How long have you known Mr. Silas Palmer?

A. More than forty-five years; fifty years.

Q. How long have you known Mr. William W. Crocker?

A. I have known him for quite a number of years. I can't really recall when I first met him.

Q. Did you know his father, William H. Crocker? A. Yes; for many, many years.

Mr. Phleger: I think that is all.

Miss Calkin: No further question.

The Examiner: You may be excused, Mr. Nichols.

(Witness excused.)

Mr. Phleger: I would like to recall Mr. Beckett.

[903]

Whereupon—

E. J. BECKETT

was recalled as a witness for and on behalf of the Applicant, and, having been previously duly sworn, was examined and testified as follows:

(Testimony of E. J. Beckett.)

Direct Examination

By Mr. Phleger:

Q. Mr. Beckett, you were asked on cross examination yesterday whether or not it was the practice of the company to send advance proofs, or a copy of its annual report, to the North American Company before those reports were published.

A. Yes.

Q. And I believe the record will show that your answer was that you did not. Since yesterday have you refreshed your recollection and gone through the correspondence with respect to that matter?

A. Yes. I thought last night, when I came to think over my testimony, that I recalled Mr. Black had, on one or two occasions, sent advance proofs of the annual reports to all of the directors, if time permitted, before the actual publication. Ordinarily there is very little time for such a thing because, owing to the requirement of the New York Stock Exchange that annual reports be in the hands of stockholders at least fifteen days prior to the annual meeting, so we always end up with the [904] printing of the report in rather a rush. There is not usually much time for sending copies of the report to directors or anyone else. But on one or two occasions I do recall that Mr. Black has sent copies of the reports, where time permitted, to all of the directors.

Q. Any copy that may have gone to Mr. Fogarty or to Mr. Freeman was sent to them, was it not,

(Testimony of E. J. Beckett.)

at the same time that similar copies were sent to all of the other directors?

A. Unquestionably; yes.

Q. Do you know of any suggestions that have ever been received from Mr. Fogarty, Mr. Freeman, or anyone connected with the North American Company, with respect to the report prior to the time the final report has been mailed to the stockholders?

A. I do not.

Mr. Phleger: I think that is all.

Cross Examination

By Miss Calkin:

Q. Has there ever been an instance in which the North American Company suggested any changes in the form of the report as submitted to them in the instances that you have just testified about?

A. Not prior to the actual printing of the report. Subsequent to the report I think there has been at least one instance of that kind. [905]

Q. But the report as submitted has never been changed after a suggestion of the North American Company?

A. You mean that the form has never been changed?

The Examiner: Form or content.

The Witness: I don't get the question.

By Miss Calkin:

Q. As I understand it, you have on a few occasions sent them a draft of the final report prior to the time it was printed in final form.

(Testimony of E. J. Beckett.)

A. That is right.

Q. Now, on those instances has the North American Company ever suggested any changes which were incorporated in the final report of that year as sent out to the stockholders?

A. No.

Q. You mean on the one occasion that you recall of North American having made suggested changes those changes were incorporated in the report for the succeeding year?

A. I don't say that they were incorporated. I don't recall whether they were or not. I don't recall exactly what the changes were, but I do recall that on one occasion one of the directors of the North American Company, after reviewing the report in its final form for that particular year, did make some suggestions as to the form of the report; for example, the location of statistical tables, as I recall, or something of [906] that type.

Q. That suggestion came after the report had been distributed? A. That is correct.

Miss Calkin: That is all.

Mr. Phleger: That is all.

The Examiner: You are excused.

(Witness excused.)

The Examiner: Do you want to call another witness at this time?

Mr. Phleger: We have a witness appearing at 2:00 o'clock, so I would suggest we adjourn now.

The Examiner: We will recess until 2:00 p. m.

(Whereupon, at 12:05 p. m., a recess was taken until 2:00 p. m. of the same day.) [907]

Afternoon Session

(The hearing was resumed pursuant to the taking of recess at 2:00 o'clock p. m.)

The Examiner: Whenever you are ready.

Mr. Phleger: Mr. McIntosh, take the stand at this time.

Whereupon—

C. K. McINTOSH

produced as a witness for and on behalf of the Applicant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Phleger:

Q. Mr. McIntosh, what is your residence address?

A. Here in San Francisco? You mean particularly in San Francisco?

Q. Yes. A. 1925 Gough Street.

Q. How long have you been a resident of California?

A. A little over fifty-three years.

Q. You came here, I understand, in 1887?

A. That is right.

(Testimony of C. K. McIntosh.)

Q. And have resided here constantly ever since?

A. Ever since in California.

Q. Yes. What is your business or profession?

A. A banker if I be one. [908]

Q. And what bank are you connected with?

A. The Bank of California.

Q. At present what position do you hold?

A. I am Chairman of the Board of Directors.

Q. And before assuming that position you were President, were you not?

A. Yes, for some years.

Q. What other firms or corporations are you connected with either as a director or as an officer?

A. I had better consult because I don't know that I could recite them all from memory.

Besides the Bank of California I am a Director of the California Packing Corporation, the Federal Reserve Bank of San Francisco, the Firemen's Fund Insurance Company, the Kennedy Mining and Milling Company, Merchants Exchange Incorporated, Pacific Gas and Electric Company, Pacific Telephone and Telegraph Company, Russ Building Company, and the San Francisco and Fresno Land Company. I think that is all.

Q. Are all those companies what might be termed California or San Francisco corporations?

A. All except—unless it be that the Federal Reserve Bank of San Francisco is not a California corporation in that sense, but it is a West Coast organization.

(Testimony of C. K. McIntosh.)

Q. Are you interested in a substantial way in any [909] corporations which are located or have their main offices in the east?

A. You mean financially interested?

Q. Yes.

A. Oh, in a very modest way. I suppose I have some shares of stock, a few shares of stock in several of them.

Q. But your main interests are and always have been——

A. (Interposing) Always, yes.

Q. (Continuing) California and particularly San Francisco enterprises? A. Entirely.

Q. Do you own or have you ever owned any stock in the North American Company?

A. Never.

Q. Or any of its affiliated or subsidiary companies? A. Never.

Q. I will show you, Mr. McIntosh, Applicant's Exhibit 32 and ask that by reference to it you state the number of shares of stock of the Pacific Gas and Electric Company which your family and affiliated interests own or hold.

A. I own directly in my own name 900 shares of the preferred stock, 6 per cent preferred stock. My wife is the owner of 1200 shares of the same stock.

Now, do you speak of the amount in the bank?

Q. Yes. [910]

A. The bank has in its custody and under its,

(Testimony of C. K. McIntosh.)

not control, but under its method of operation 123,000 shares, something of that kind. I think the total there would be 125,993 if this mathematics is correct. That is held in various capacities.

It is held first as executor under the wills of those who have it in their estates, second as trustee under testamentary trusts, in which that stock is incorporated as some of the assets of the trust, thirdly in voluntary trusts that are made not testamentary by order of the court but are made by the voluntary act of the trustor and those trusts have stock in it.

Then we have what are called agency accounts. "Agency Accounts" means that if one is not inclined to bother about their own affairs they turn their investments and certificates and whatnot over to us and we handle it as if we were their clerk; collect the dividends, collect their accounts and in cases where they wish we pay their bills, and still a larger amount, and probably the largest single amount we have is simply left with us for safekeeping. That is to say they wish their securities centralized and they will be left in the bank and a receipt given to them for safekeeping for their account.

The Examiner: Do these figures include those securities as well?

The Witness: Beg your pardon? [911]

The Examiner: These figures that you have read

(Testimony of C. K. McIntosh.)

from this chart include those safekeeping securities as well?

The Witness: Yes, it includes all, includes all the ones that are under our custody, in our custody. They are not under our control, but they are in our custody.

By Mr. Phleger:

Q. The latter amounts that you say are in your safekeeping are actually in the bank's possession?

A. Oh, yes, absolutely physically there.

Q. And I suppose the depositors, that is, the owners of those securities are clients of the bank?

A. Are our own people.

Q. Yes. Those do not include securities which are in safe deposit boxes, of course?

A. Oh, no, not at all; we know nothing of that.

Q. Mr. McIntosh, you were associated over a period of many years, were you not, with Mr. Frank Anderson?

A. Oh, yes, many years.

Q. He was an officer of the Bank of California?

A. Yes.

Q. During his lifetime?

A. Yes, he was an officer all the time I knew him.

Q. He was for many years, was he not, a director and member of the Executive Committee of the the Pacific Gas and Electric Company? [912]

A. He has been a director of the Pacific Gas and Electric Company, I think, way back to its

(Testimony of C. K. McIntosh.)

earlier days. I don't know of another director that has been any longer than he was. He was connected with its incipiency away back there.

Q. Was he in his lifetime very active in his affairs?

A. Yes, as a director and member of the Executive Committee.

Q. Did he frequently discuss the Company's affairs with you? A. Often.

Q. Do you recall when it was that you first were elected a director of Pacific Gas and Electric Company?

A. I have got that. I couldn't remember. (Examining document) I was elected a director, first as a temporary director in February of 1926. I might explain how that was, if you would care to have me do so.

Q. Yes, if you will.

A. Mr. Anderson, who was not only my associate there in the bank, but he was one of my warmest personal friends besides, had been a director, as I say, from the early days of the Gas Company in its smaller form and was intensely interested in it, and as he grew older he began to take things a little more leisurely. He would sometimes start out on a trip which would take him from three to six months. During [913] that interim—I can only presume from what has happened—the people in the Gas Company then in control didn't wish to have his connections severed because of his long-time asso-

(Testimony of C. K. McIntosh.)

ciations and knowledge of their affairs and yet they would have hesitated to have gone to a stranger and asked him to take a temporary job. Knowing my connection with him and my interest in the company and my knowledge in a certain way of its affairs they would come to me and ask me if I would consent to pinch-hit while he was gone and get out when he came back, so that was perfectly understood and I was very glad to do it. I did that on three occasions. In 1926, I was there from February to June; in 1930, I was there from January until July; in 1932, I was there from July until September.

Then, in 1935, I was elected a director. He died in 1935 and I was elected a director and I have served since.

By Mr. Phleger:

Q. Mr. McIntosh, during the periods which you served as a director, as you might say, in place of Mr. Anderson, in 1926, again in 1930, and again in 1932, did you also serve as a member of the Executive Committee of the company?

A. Yes, each time.

Q. Mr. McIntosh, the Bank of California is a large bank, is it not, having its head offices in San Francisco with branches in both Oregon and Washington? A. Oregon and Washington, yes. [914]

Q. It has been a bank in this community for many years? A. Since 1864.

(Testimony of C. K. McIntosh.)

Q. Yes. The American Trust Company is also a large bank? A. Oh, yes.

Q. Which has been in existence and its predecessors for many years? A. Oh, yes.

Q. Is the same thing true of the Crocker First National Bank?

A. Oh, yes, they all go back many, many years and the elements which make them up. The Bank of California still has its original form. It never either amalgamated with or was amalgamated with another.

In case of the American Trust Company, the Crocker, the Wells Fargo and all the old banks, they each have their antiquity but not in the exact form of their present title. They all go back as early as we are; some might trace it earlier.

Q. The Wells Fargo Bank and Union Trust Company is also a large institution? A. Very.

Q. There are associates of yours on the Board of Directors of the Pacific Gas and Electric Company that are associated with each of the banks that I have named? [915]

A. Yes, yes. There are directors of the Gas Company who are associated with the American Trust and also the Wells Fargo and also the Crocker, that is correct.

Q. Who first talked with you about becoming a director of the Pacific Gas and Electric Company? Let us go back to the 1926 occasion.

A. That was the President of the Gas Com-

(Testimony of C. K. McIntosh.)

pany. Whether Mr. Creed was alive then I don't know. It was Mr. Creed if he were alive and Mr. Hockenbeamer if he were alive.

Q. Yes, and latterly when you assumed your present directorship in 1935 who was it that spoke to you?

A. Mr. Black then spoke to me about it.

Q. Yes. Were you acquainted with Mr. Frank Dame and Mr. Edward Gruhl who are now deceased?

A. Not that I know of. *Are* they connected with the North American.

Q. In their lifetime they were connected with the North American Company.

A. Well, I have a vague recollection—I don't know whether it is accurate at all or not—I have a vague recollection that I was serving on that Executive Committee at the time the arrangement for the purchase of the North American properties was consummated, not while it was being originated or carried out, but when it was consummated I was there, I think, [916] and have a vague recollection that two men from some place in the east were there. Whether they were either of these men or others, or whether they were officers of the company I don't know. I wouldn't know them if I saw them on the street. I may have met anyone who might have been here at that time but if I did so it was a casual meeting at the time that thing took place.

Q. You have already testified that you served as a director and member of the Executive Committee

(Testimony of C. K. McIntosh.)

of the Applicant during the period January to July, 1930, and it is a fact that the transaction between the North American Company and the Pacific Gas and Electric Company was consummated during that period?

A. On those dates I was there; I was there at that time on the Board, at that time, to consummate it. I was not there at the time it was negotiated.

Q. Did you ever know Mr. Frank W. Doolittle of the North American Company? A. No.

Q. Are you acquainted with Mr. J. F. Fogarty or with Mr. Herbert C. Freeman who are now officers and directors of North American Company?

A. Not to my knowledge. If I have ever seen them I don't know of it, no. [917]

Q. Have you ever communicated with the gentlemen I have just named, Dame, Gruhl, Doolittle, Fogarty, Freeman, by letter, telegram, telephone or otherwise? A. Never in any way, no.

Q. Did you know Mr. Guy Earl during his lifetime? A. Oh, very well.

Q. Did he serve as a director and member of the Executive Committee during some period?

A. Yes, at one of those times he was on the Board at the same time I was serving temporarily.

Q. Did he ever discuss with you Pacific Gas and Electric affairs other than at a Board meeting or a meeting of the Executive Committee?

A. No, never, except the usual discussion that would take place around the table at a Board meeting.

(Testimony of C. K. McIntosh.)

Q. Did he ever ask you to vote in any particular way on any particular matter?

A. Never, never.

Q. As a Director or member of the Executive Committee of the Pacific Gas and Electric Company have you ever heard it stated what the attitude of the North American Company was with respect to any pending matter?

A. Never, I never heard it stated. [918]

Q. Do you recall any representations by Mr. Hockenbeamer to the Board of Directors or the Executive Committee of the Pacific Gas and Electric Company during the time the North American-Pacific Gas and Electric transaction was being consummated with respect to the position which the North American Company would occupy after that transaction as a substantial stockholder in the Pacific Gas and Electric Company?

A. You mean to say whether he has stated to the Board what his understanding with them was?

Q. Yes, sir.

A. Certainly, yes; I remember that very well indeed. In fact, it was brought up by the Board in discussion several times.

Q. Yes. What statement did he make in substance?

A. The question was raised in the Board during the time that—well, I may have gathered this from

(Testimony of C. K. McIntosh.)

Mr. Anderson and my own experience—I can't be positive—the question was raised as to the propriety of getting so large an interest in an outside hand, as Mr. Hockenbeamer had assured the Board that he had secured from the North American Company a complete understanding that they would not interfere in any way, in any manner whatsoever, with the control of the company, and I believe that Mr. Anderson told me that they had cabled him to that effect while he was away. [919]

Q. Do you remember anything in connection with the election of Mr. Black to the presidency of the company?

A. I was not there at the time; I was not on the Board at the time.

Q. How long have you known Mr. Foote of the Gas Company? A. Mr. Foote?

Q. Yes.

A. Oh, "memory of man runs not to the contrary". I suppose I have known Foote forty years, I suppose.

Q. How long have you known Mr. C. O. G. Miller? A. Longer than that.

Q. How long have you known Mr. John D. McKee? A. Equally long.

Q. How long have you known Mr. Norman B. Livermore?

A. I should say twenty-five or thirty years, maybe, twenty or more.

(Testimony of C. K. McIntosh.)

Q. How long have you known Mr. Allen L. Chickering?

A. I have known him always, since I can remember, all you have mentioned.

Q. How long have you known Mr. Paul M. Downing?

A. A long time, twenty, thirty years. Paul himself is over there grinning at me. I think he is trying to prove I am older than I am. (laughter)

Q. How long have you known Mr. Coghlan?

A. The same length of time. [920]

Q. How long have you known Mr. Wishon?

A. Not so long. I knew Mr. Wishon more particularly since this amalgamation took place. I had met him before; I didn't know him as intimately as I knew some of these other actors.

Q. How long have you known Mr. Silas H. Palmer?

A. Oh, I have known him a long time too. I knew him before he was married; God knows how long that is. (laughter)

Q. How long have you known Mr. William W. Crocker?

A. Since he was a small boy in knickerbockers.

Q. Did you know his father William H. Crocker?

A. Intimately.

Q. How long have you known Mr. Henry V. Nichols?

A. Well, I should say twenty years possibly.

Q. How long have you known Mr. Black?

A. Mr. James Black?

(Testimony of C. K. McIntosh.)

Q. Yes.

A. Well, I have known him better since 1935 but I have met him before, but it was mostly casual before that.

Q. You knew him before he went east did you?

A. I knew him but I had only met him by just being introduced to him and I can't recall any of the circumstances of that.

I hope you won't tell him I don't remember him.

[921]

The Examiner: He is grinning at you too.

The Witness: He has got a worse one than that on me. (laughter)

By Mr. Phleger:

Q. Mr. McIntosh, have you ever at any time or in any connection observed anything indicating that the Pacific Gas and Electric Company is or was controlled directly or indirectly by the North American Company or that the management or policies of the Pacific Gas and Electric Company are or were subject to a controlling influence directly or indirectly by the North American Company?

A. Never at all. In fact, if it weren't for drawing upon my recollection I wouldn't even know that the North American Company is a stockholder.

Q. If the North American Company were to attempt directly or indirectly to control or to exercise a dominating influence over the management or policies of the Pacific Gas and Electric Company would you oppose such attempts?

(Testimony of C. K. McIntosh.)

A. Indeed I would.

Q. Do you think that the other directors of the Pacific Gas and Electric Company, with the exception of Mr. Fogarty and Mr. Freeman, would also oppose such attempts?

A. I would stake my life on it.

Q. In the event that the North American Company were to [922] attempt to control or exercise a dominating influence over the management or policies of the Pacific Gas and Electric Company do you think it would be able to do so?

A. In the vernacular "they couldn't get to first base" in my judgment.

Q. If the North American Company attempted to secure sufficient proxies to obtain a majority of the representation at the stockholders' meeting of the Pacific Gas and Electric Company and such an attempt were resisted by the management and the San Francisco directors, do you think that the North American Company would be successful in its attempt?

A. I couldn't imagine they could obtain any success whatever. [923]

Q. And what reasons have you for your last answer?

A. Well, in the first place this company is a sort of California baby and Californians—I speak now because I was not born here—Californians have a sort of a native son complex, and they don't like the interference of outside people. (Laughter)

(Testimony of C. K. McIntosh.)

They are proud of their company because they have been connected with it through stock ownership for maybe a lifetime, most of them, many of them, and they would resent any outside interference of any character or kind.

In the next place, it would be so simple to show that no good could possibly be expected to come from an alignment with the North American Company or any other outside company, inasmuch as they were not—would not be able to furnish from any nearby source that they had any power to meet peak loads or anything of that kind. There would be no union of that kind.

The Pacific Gas and Electric Company certainly couldn't be improved by any engineering counsellor advice that they could give. They certainly couldn't be helped materially by any financial advice that they could give and so there wouldn't be no end that would be beneficial to stockholders that could be gained by any such thing, and the stockholders could readily be told that and would be told that, or would know it themselves. [924]

Speaking of our "Native Son Policy" it is a matter of common record here that we have one of our large corporations, not incorporated in California either, that California has spanked as thoroughly as any corporation was ever spanked by anybody. It has become a political issue and campaigns were fought on it, but just as soon as somebody else on

(Testimony of C. K. McIntosh.)

the outside started to accuse them of anything the entire outfit got up and defended them.

Now, that is what I mean by the "Native Son Policy". These people are proud of this thing; it is their own. I have forgotten the figures, but I think something like between 45 or 50 per cent of the stockholders have California addresses.

Q. That is, 40 to 50 per cent of the stock is owned by Californians? A. I think so.

Q. Yes.

A. I am not speaking by the book, but that is my recollection.

Q. Do you recall, Mr. McIntosh, some of the individuals that have been active in the affairs of the Pacific Gas and Electric Company in former years?

A. Oh, yes. I can go back before you were born. Did you ever know Joe Crockett?

Q. No. [925]

A. I did. Clear down the line; Frank Drum was a personal friend; Creed was a personal friend; John Britton was a personal friend; Hockenbeamer was a personal friend and I am getting to like James Black. (Laughter)

Q. During the entire period that you have known this company has it ever been managed, controlled or influenced by interests outside of California?

A. No.

Q. It has always been a California enterprise?

A. Always, always, always.

(Testimony of C. K. McIntosh.)

Mr. Phleger: That is all.

The Examiner: Miss Calkin?

Cross Examination

By Miss Calkin:

Q. Mr. McIntosh, would you say that you were selected as a director of the Applicant to fill the vacancy created by Mr. Anderson's death?

A. Yes—well, I don't know that I filled that particular vacancy, but after he died I was elected a director, yes.

Q. And at that time you were not particularly well acquainted with Mr. Black?

A. Not particularly; I had met him.

Q. Would you feel that you, as a director of the Applicant, were representing substantially the same interests [926] as were represented by Mr. Anderson during the period he was director?

A. Oh, entirely. I don't represent interests other than my own; I am not authorized to represent anybody on it.

Q. Well, in a sense do you not represent the interests of your bank?

A. The bank has no interest other than I have described as being in their custody. We have no control; the bank, as a bank, owns neither stock nor bonds just as it happens. I am not authorized to represent anybody?

Q. In the bank's capacity as trustee doesn't it take an interest in the companies in which it has investments?

(Testimony of C. K. McIntosh.)

A. It does, it does, and in the case of the normal course of procedure in a corporation in which, as its trustee, we have stock. We wouldn't bother to secure the consent of those otherwise interested if there was no point involved, but in the case of Pacific Gas and Electric Company or any other company if there were a controversial contest on within the company itself we would consult the people who are ultimately owners of that stock before we acted.

Q. Why would you oppose any attempt by North American Company to exert a controlling influence over the affairs of the Applicant?

A. In the first place it could do no good at all unless it be considered from a standpoint of some pyramiding on the [927] speculated value of shares in which we are not interested at all. They could furnish nothing, and then, besides, holding companies are not white-haired boys any longer. They have been given, perhaps, a degree of stigma of iniquity that is unjustified as an entirety because some have been iniquitous, but a holding company, while it may be good, has justified itself by something it can provide to the whole scheme of things to justify its being.

Now, nobody owning our stock elsewhere, the Pacific Gas and Electric Company stock elsewhere, I don't see that they could contribute a thing. Will you pardon me? (Laughter)

Q. Do you not feel that North American experts might be in a position to give the Applicant helpful advice on matters of utility financing?

(Testimony of C. K. McIntosh.)

A. Oh, no; oh, no. As a matter of fact, the man who originated the modern method of financing and such things, was Hockenbeamer and it has been followed elsewhere; perhaps, by the North American, I don't know. I am not familiar enough with them to know whether it was or not.

Q. Are you referring to the sale of preferred stock to customers?

A. Yes, and they have the company in the position in which it is now financially, where, if I am not mistaken, fully 50 per cent of its investment is represented by stock [928] as against an equal amount of bonds, instead of two-thirds and one-third or whatever portion.

Now, that was Hockenbeamer's idea.

Q. Well, you think the capitalization of the company improved, I mean, the corporate structure of the company improved under Mr. Hockenbeamer's regime?

A. Oh, well, I am not trying to ascribe all that to Mr. Hockenbeamer. At the time it was opportune to do that. They saw, the directors at that time—no doubt I can speak for them to this extent—they saw the desirability of not extending them just as far as they could on bond flotations because the time might come when expansion would take such a jump that they would be too thinly balanced by stock behind the bonds, so it was very wisely decided at that time to stimulate the stock ownership behind the bonds so that they could take care of expansion of years to come by either method.

(Testimony of C. K. McIntosh.)

Q. Were you ever associated with the Western Power Corporation or any of its subsidiaries?

A. The what?

Q. The Western Power Corporation?

A. No, never.

Q. As a director of the Applicant and as a member of its Executive Committee to what extent do you participate in the formulation of the policies of the Vallejo Electric [929] Light & Power Company?

A. I am not now a member of the Executive Committee.

Q. Well, that is correct—I beg your pardon—but as a director of the Applicant?

A. In what way do we participate in what?

Q. The formulation of the policies of the Vallejo Electric Light & Power Company?

A. Of the company itself, you mean?

Q. Yes.

A. Why, we contribute as any other director contributes.

Q. Now, I am speaking of as a director of the Applicant, to what extent do you participate in the formulation of the operating policies or financial policies of the Vallejo Electric Light & Power Company?

A. Those things are in a normal course largely matters of routine. No director, at least I am not—I don't think that any of the rest of us that are not engaged with the company are experienced either

(Testimony of C. K. McIntosh.)

gas or electric engineers. We wouldn't be qualified to participate in the discussion, technical discussions of the erection of plants or whatnot. Those of us who do know something aboue finance help with our advice. In fact, as I see it, a director's purpose is to utilize in helping the officers of the company to the extent of which he is capable, the ordinary common [930] sense and experience that he has gained in other lines which might be applicable.

Q. Well, now, are you referring to your duties as director in relation to the Applicant, that is, Pacific Gas and Electric Company?

A. Yes, or any other director to any other thing.

Q. I think you misunderstood my question.

I am speaking of the Vallejo Electric Light & Power Company in which the Pacific Gas and Electric Company has a substantial stock ownership.

A. No, I am not a director of that as far as I know.

Q. Well, as a director of the Applicant do you take any part in the formulation of the operating policies of the Vallejo Electric Light & Power Company? A. I have not.

Q. So far as you know that company's problems have not been discussed or determined by the Applicant's Board?

A. I have no doubt they have, by the committee, at least. The committee is authorized to do those things; I have no doubt they have. But, you must

(Testimony of C. K. McIntosh.)

understand that as a rule there are no problems; there is nothing but routine matter to do.

Q. I am still speaking of Vallejo Light & Power [931] Company, Mr. McIntosh.

A. As far as I know, I know nothing of their problem.

Q. Do you know who does determine the operating problems of the company?

A. The Executive Committee, I should imagine, or the directors of that company. That company has its own directors, perhaps they do it. I have no doubt; I am not informed.

Q. How would you describe Mr. Hockenbeamer's outstanding characteristics as a utility executive?

A. Well, Mr. Hockenbeamer's outstanding capacity was in finance; he was the treasurer of the company before and his outstanding capacity and habit of mind was in finance. Engineers existed in the gas company. The president or head of the company doesn't necessarily have to be an engineer or telephone operator.

Q. Who would you say was most active in carrying on the negotiations which resulted in the acquisition by the North American Company of the large block of the common stock of the Applicant?

A. Well, as you know, I was not there at the time, except at its termination I presume the officers of the company, as they would be authorized to carry on the negotiations of anything pertaining

(Testimony of C. K. McIntosh.)

to the company's progress. I presume the officers of the company, Mr. Hockenbeamer led it; I was [932] not there at the time.

Q. Do you know who represented the North American Company in connection with these negotiations? A. No, I do not.

Q. Do you know anything about any assurances which might have been given by the Standard Gas & Electric Company at the time it acquired a large block of the Applicant's stock in reference to the extent of the participation of the Standard Gas & Electric Company in the affairs of the Applicant?

A. You are speaking of the Standard as distinguished from the North American?

Q. That is correct.

A. No, I don't know anything about that.

Q. And what was your understanding again, please, as to the assurances which Mr. Hockenbeamer told the Board he had received from the North American Company in reference to its participation?

A. It was a matter, as I say, entered into in the consultations with the Board and I learned this mainly through Mr. Anderson, but afterwards I was there when it was nearly consummated, that they were a little bit reluctant to consider this large amount of stock outstanding unless there were an assurance of some sort that there wouldn't be attempted interference. [933]

(Testimony of C. K. McIntosh.)

Mr. Hockenbeamer had assured the Board, and I have heard him say so, that he had such assurance they would not interfere in any way. They regarded it as an investment instead of the property they formerly owned.

Q. Were you, as a member of the Board at that time, apprehensive as to a possible attempt by North American to dominate the Applicant's affairs?

A. Not apprehensive particularly, as they said they wouldn't. I was not apprehensive. I don't know at that time what percentage it was—it only turned out to be about 17 per cent anyway —no, it was not apprehension, rather than disinclination to face an attempt outside.

Q. So far as you know, no representatives of the North American Company appeared before the Board at that time and gave the assurances of the North American Company?

A. Not as far as I know, not at any time. [934]

Q. Do you recall any understanding had at that time, that is, in 1930, when this transaction was being carried out, as to what representation, if any, the North American Company would have on the applicant's Board in the event that it acquired stock?

A. No; I only know, as a matter of fact, that two directors were named, and I have never seen either one of them.

(Testimony of C. K. McIntosh.)

Q. Mr. Earl was a very active member of the Board during his lifetime, was he not?

A. The same as the others; just as the others at the time I was there.

Q. Have you ever been told that the North American Company did not consider its representation on the applicant's Board as important since Mr. Black has been president as it was during Mr. Hockenbeamer's lifetime?

A. Oh, no, no. As I say, in past years I have to rely upon my recollection; I never heard a thing about that.

Q. Do you consider Mr. Black a representative of the North American Company on the applicant's Board at the present time?

A. Well, I should say not.

Q. Do you know anything about North Americans having relinquished the right to a third representative on applicant's Board in order to make way for a local director? [935] A. No.

Q. Do you know who selects the proxies for the annual stockholders' meeting of the applicant?

A. I suppose they are ground out in the usual form of all corporations, ground out proxies.

Q. Do you know who makes up the slate of directors whose names are included in the proxy statements sent out with the proxies prior to the annual meeting?

A. Who selects the names of the directors?

Q. Yes.

(Testimony of C. K. McIntosh.)

A. If there is a vacancy, I suppose, it is done —I am sure it is done exactly as it is done at every other corporation. The remaining directors are considered because it is their authority to fill a vacancy in the interim, at the time of the——

Q. (Interposing) No, I mean under the present rules of the Securities and Exchange Commission it is necessary that a proxy statement including the names of all directors who the proxy committee selected by the management proposes to vote for, be sent out with the proxy solicitation, and do you know who selects the names that go in that proxy statement?

A. It is a continuation of the same names if they have been satisfactory, out of jail and still alive.

Q. Well, has that always been true so far as the applicant has been concerned since those proxy statements have [936] been made up ?

A. Well, if you mean to say that there is some group who gets together and participates in the selection of those names, I don't believe it ever happened.

Q. I don't mean to say anything, Mr. McIntosh. I just wondered how that slate of directors was chosen.

A. Perpetuation of the ones that are there if they have been satisfactory. I don't think any question of that has arisen.

(Testimony of C. K. McIntosh.)

Q. Do you know how the applicant is advised as to what persons the North American Company wants as its representatives?

A. No, I don't know anything about it.

Q. Does Mr. Black advise the Board of North American's views as to a particular measure when he submits it to the Board?

A. Never had; I haven't heard North American's name mentioned in the Board room since I can recollect.

Q. Have you ever been advised from any source since you have been a director as to what North American's attitude was with respect to a particular problem?

A. In any instance, never.

Q. Have you ever inquired of Mr. Black as to what North American's views were in respect to a pending matter? [937]

A. Never, because I didn't care.

Q. What weight do you think any suggestion which North American might make would be given to that suggestion in view of the fact that it came from the largest stockholder of the applicant?

A. North American's suggestion, whatever it was, I should think, would receive exactly the same consideration which would be given to any other stockholder's recommendation with possibly an understanding that if they made a recommendation as to some engineering or other policy, it would be considered in the light of their experience as well

(Testimony of C. K. McIntosh.)

as because they were stockholders. We would consider their reputation, or the recommendation of any stockholder, or a question from any stockholder, whether they held 17 per cent or a half of one per cent.

Q. But, to your knowledge, North American has made no such representations or recommendations since you have been on the Board?

A. Never heard of it if they did.

Q. Has the relationship between the Board and Mr. Black been harmonious at all times since you have been on the Board?

A. I am obliged to admit it has, yes.

Q. Do you, as a director of the applicant, feel free to act on any major problem concerning the applicant without [938] being advised as to North American's views?

A. Absolutely, absolutely.

Q. Did Mr. Anderson discuss with you the selection of Mr. Black as president of the applicant prior to the time you were selected?

A. I am not sure that he did; I am not sure about that. Very likely he spoke of it. We sat in adjoining rooms.

Q. Did you ever heard anyone say who suggested Mr. Black's name as president of the applicant after the death of Mr. Hockenbeamer?

The Witness: What was that?

(Testimony of C. K. McIntosh.)

The Examiner: Read it, Miss Reporter.

(The question referred to was read by the reporter as above recorded.)

A. No, I never did.

By Miss Calkin:

Q. You don't know, then, whether Mr. Black was nominated by North American representatives on the applicant's Board?

A. Yes, I do; yes, I know he was not.

Q. Well, what do you know about his selection?

A. I know those directors down there and North American couldn't get a nomination through them with a cold chisel.

Q. So that it is solely by reason of the fact that you [939] are well acquainted with the other members of the Board that you believe that Mr. Black's name was suggested by the local directors?

A. Oh, I know it was.

Q. Did you ever hear any discussions at the time you became director or immediately prior thereto as to whether or not prior to the election of Mr. Black, the directors had received from him any assurances as to what his future attitude toward the North American Company would be?

A. No, I don't know that. I was not there at the time.

Q. Mr. McIntosh, do you think that it would be possible for the North American Company to ex-

(Testimony of C. K. McIntosh.)

ert a very substantial influence over the applicant's affairs if it exerted such an influence over Mr. Black even though none of its representatives attended Board meetings or had any other contacts with other directors or officers of the company?

A. I know it couldn't; I know it couldn't exert any influence over Mr. Black. In the first place I say I know that as I know a man. Even if it did, Mr. Black couldn't get to first base with that Board, if it did.

Q. You are not familiar with the extent of Mr. Black's contacts with the North American Company?

A. No, except to know that he was with them in California and in the East. [940]

Q. I mean since he has become president of the applicant?

A. No, he has not confided to me.

Q. As a director of the applicant, are you familiar with the reports which are submitted by the applicant to the North American Company?

A. No, not at all.

Q. Who recommends the declaration of dividends to the Board?

A. Who recommends them?

Q. Yes, sir.

A. They are recommended almost in all cases if the earning status of the company is such as to justify a dividend of a certain amount, it is recom-

(Testimony of C. K. McIntosh.)

mended by the management and agreed to or not by the Board, as the case might be, but it is determined, of course, by the condition of earnings and the need.

Q. Have the dividends on applicant's common stock been increased or decreased since you became a member of the Board in 1935?

A. I don't recall that they have; it may have been possible; yes, it may have been possible.

Q. I believe the record shows that they were increased in the third quarter of 1936, from 6 to 8 per cent. [941]

A. Very likely they have.

Mr. Phleger: Fourth quarter in '36.

The Witness: That is all based upon the ability to pay on them; that is what it amounts to. It is quite possible.

By Miss Calkin:

Q. At the time of the increase do you recall whether or not Mr. Black made any statement as to what North American's attitude was?

A. I am sure he didn't; I would remember that if he had.

Q. Do you recall the financing of the applicant which occurred in the spring of 1936, at which time the applicant sold a 90 million dollar bond issue to a syndicate headed by Blyth & Co.?

A. Yes.

Q. Are you acquainted with the fact that the 1935 financing of the applicant had been headed

(Testimony of C. K. McIntosh.)

by a syndicate managed by the banking firm of Lazard Freres & Co.?

A. In 1936, you say?

Q. No, in 1935.

A. '35? That was probably before I was a director. I was a director in December of '35.

Q. Well, in connection with the first issue of the applicant in 1936, which was the 90 million dollar bond issue—— A. Yes, sir.

Q. Do you recall any discussions before the Board [942] relating to the change of syndicate manager from Lazard Freres & Company to Blyth & Co.?

A. Oh, I have no doubt there was. I don't know if it was exactly called a change. As I recall it, Blyth & Co. were not syndicate managers at one time; they were participants in syndicates, and it is only just a matter of considered easiest policy to handle a thing through one or more channels. No, I don't recall any discussions about it at all; it would be a normal thing.

Q. Are you acquainted with Mr. Blyth?

A. I beg your pardon?

Q. Are you acquainted with Mr. Charles Blyth?

A. Very well.

Q. Did Mr. Blyth ever approach you as a member of applicant's Board in an effort to get the leadership of applicant's financing?

A. Never, never spoke to me about it.

(Testimony of C. K. McIntosh.)

Q. Did any representatives of Blyth & Co. approach you for such purpose?

A. No, no, never.

Q. Do you recall who recommended the name of Blyth & Co. as manager of the 1936 syndicate?

A. No, I don't. I suppose it was the—probably it came from the executive committee; I don't know that it was. [943] I wouldn't have remembered the change, if you call it a change. I don't remember it.

Q. You never were familiar with what might be termed a struggle on the part of Blyth & Co. to get the leadership of the applicant's financing away from Lazard Freres & Company?

A. No, I don't know anything about that at all, no.

Q. Do you know where the negotiations with respect to that financing were carried on?

A. You mean the financing of the 1936 bond issue?

Q. Yes.

A. Carried on, I suppose, in San Francisco.

Q. Do you know whether or not North American had any participation in the selection of Blyth & Co.?

A. I am sure they had none. I never heard of them having a suggestion of a voice in it.

Q. Do you know how Dillon Read & Co. got

(Testimony of C. K. McIntosh.)

a substantial participation in the 90 million dollar issue?

A. I haven't the faintest idea unless because they were able to distribute.

Q. Did you play any part in the determination of the syndicate membership as made up?

A. No, no. Oh, it might have been talked of at the Board, that is all. What we were interested in was the soundness of the group and the ability to distribute the [944] securities. We had no interest in any personal one of them at all.

Q. Would you look with more favor upon a syndicate formed to purchase the applicant's bonds which was headed by Blyth & Co. than one headed by Lazard Freres & Co.?

A. Only that Blyth & Co. is a local house and they are on the ground. They have their distributing facilities both here and in the East. They could probably—I don't know—I am not attempting to criticize or deprecate Lazard & Company's capacities; I don't know what it is.

Q. Are you acquainted with any of the persons associated with Lazard Freres & Company?

A. No, I am not. I think the last one is dead that I knew. What is his name, Herman? That big fellow that used to be out here in the Anglo Bank?

Q. Mr. Weeks?

A. No, this man was dead before you were born, I guess, a long time. (Laughter.)

(Testimony of C. K. McIntosh.)

He used to be a vice president or something in the Anglo Bank.

Mr. Phleger: Greenbaum?

The Witness: No, it isn't that. There were two brothers of them before you were born too.

By Miss Calkin:

Q. Connected with Lazard Freres & Company? [945]

A. He went to New York and was with Lazard Freres & Company for a while.

Q. Were you ever acquainted with Stanley Russell? A. Stanley Russell?

Q. When he was associated with the National City Company?

A. I don't recall; I may have been. Was he here or in the east?

Q. I think he was in the East.

A. I don't recall; I may have been.

Q. Do you know of no instance in which the North American Company has participated in any of the financial policies of the applicant or in the consummation of any of the refinancing plans of the applicant?

A. No instance of any sort.

Miss Calkin: I think that is all.

The Examiner: Any further questions?

(Testimony of C. K. McIntosh.)

Redirect Examination

By Mr. Phleger:

Q. Do you look upon Blyth & Co. as a California house?

A. We do. Maybe that is incorrect, because they have a large house in New York but we look upon them as a California house certainly. Mr. Blyth himself lives here; he is [946] the head of the house. He lives here.

Q. Other things being equal, would you prefer, as a director, to deal with a California house than with an eastern house?

A. Well, other things being equal, yes, but as director I would want to be assured that the house that we were dealing with was not only California but equally able to distribute the securities properly.

Q. That is connoted in "other things being equal?" A. Yes, I would.

Mr. Phleger: That is all.

The Examiner: Any further questions?

Miss Calkin: No further questions.

The Examiner: You may be excused, then. Thank you very much.

(Witness excused.)

We will have a short recess.

(Whereupon a short recess was taken, after which proceedings were resumed as follows:)

The Examiner: Mr. Wishon, I think you were about to be sworn.